10–16–07 Tuesday
Vol. 72 No. 199 Oct. 16, 2007

Pages 58469–58752

# Federal Register

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 205

**[Docket Number AMS–TM–06–0222; TM–04–07FR]**

**RIN 0581–AC51**

## National Organic Program, Sunset Review

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) regulations to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) from November 17, 2005 through October 19, 2006. The amendments addressed in this final rule pertain to the continued exemption (use) and prohibition of 168 substances in organic production and handling. Consistent with the recommendations from the NOSB, this final rule renews 165 exemptions and prohibitions on the National List (along with any restrictive annotations) and removes 3 exemptions from the National List.

**DATES:** *Effective Date:* This rule becomes effective October 21, 2007.

**FOR FURTHER INFORMATION CONTACT:** Arthur Neal, Director, Program Administration, Telephone: (202) 720–3252; Fax: (202) 205–7808.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Organic Foods Production Act (OFPA), 7 U.S.C. 6501 *et seq.*, authorizes the establishment of the National List of allowed and prohibited substances. The National List identifies synthetic substances (synthetics) that are exempted (allowed) and nonsynthetic substances (nonsynthetics) that are prohibited in organic crop and livestock production. The National List also identifies nonsynthetics and synthetics that are exempted for use in organic handling.

The exemptions and prohibitions granted under the OFPA are required to be reviewed every 5 years by the NOSB. The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If they are not reviewed by the NOSB within 5 years of their inclusion on the National List and renewed by the Secretary, their authorized use or prohibition expires. This means that a synthetic substance exempted for use on the National List in 2002 and currently allowed for use in organic production will no longer be allowed for use after October 21, 2007; a non-synthetic substance prohibited from use on the National List in 2002 and currently prohibited from use in organic production will be allowed after October 21, 2007; and a synthetic or nonsynthetic substance exempted for use on the National List and currently allowed for use in organic handling will be prohibited after October 21, 2007.

This final rule amends the National List to reflect recommendations submitted to the Secretary by the NOSB concerning the continued use and prohibition of 168 substances in organic production and handling. Consistent with the recommendations from the NOSB, this final rule renews 165 exemptions and prohibitions on the National List (along with any restrictive annotations) and removes 3 exemptions from the National List.

Under the authority of the OFPA, as amended, (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended five times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), October 21, 2005 (70 CFR 61217), September 11, 2006 (71 FR 53299), and June 27, 2007 (72 FR 35137).

### II. Overview of Amendments

The following provides an overview of the amendments made to designated sections of the National List regulations:

*Renewals*

This final rule amends the USDA's National organic regulations (7 CFR part 205) to renew exemptions and prohibitions for the following substances in organic agricultural production and handling (use categories and any restrictive annotations remain unchanged, but have been omitted from this overview):

*Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production*

1. Ethanol.
2. Isopropanol.
3. Calcium hypochlorite.
4. Chlorine dioxide.
5. Sodium hypochlorite.
6. Hydrogen peroxide.
7. Soap-based algicide/demossers.
8. Herbicides, soap-based.
9. Newspaper or other recycled paper, without glossy or colored inks.
10. Plastic mulch and covers.
11. Newspapers or other recycled paper, without glossy or colored inks.
12. Soaps, ammonium.
13. Ammonium carbonate.
14. Boric acid.
15. Elemental sulfur.
16. Lime sulfur-including calcium polysulfide.
17. Oils, horticultural-narrow range oils as dormant, suffocating, and summer oils.
18. Soaps, insecticidal.
19. Sticky traps/barriers.
20. Pheromones.
21. Sulfur dioxide.
22. Vitamin $D_3$.
23. Copper hydroxide.
24. Copper oxide.
25. Copper oxychloride.
26. Copper sulfate.
27. Hydrated lime.
28. Hydrogen peroxide.
29. Lime sulfur.
30. Oils, horticultural, narrow range oils as dormant, suffocating, and summer oils.
31. Potassium bicarbonate.
32. Elemental sulfur.
33. Streptomycin.
34. Tetracycline (oxytetracycline calcium complex).
35. Aquatic plant extracts (other than hydrolyzed).
36. Elemental sulfur.
37. Humic acids.
38. Lignin sulfonate.
39. Magnesium sulfate.

40. Soluble boron products.
41. Sulfates.
42. Carbonates.
43. Oxides.
44. Silicate of zinc.
45. Silicate of copper.
46. Silicate of iron.
47. Silicate of manganese.
48. Silicate of molybdenum.
49. Silicate of selenium.
50. Silicate of cobalt.
51. Liquid fish products.
52. Vitamin $B_1$.
53. Vitamin C.
54. Vitamin E.
55. Ethylene gas.
56. Lignin sulfonate.
57. Sodium silicate.
58. EPA List 4—Inerts of Minimal Concern.

*Section 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production*

1. Ash from manure burning.
2. Arsenic.
3. Lead salts.
4. Potassium chloride.
5. Sodium fluoaluminate (mined).
6. Sodium nitrate.
7. Strychnine.
8. Tobacco dust (nicotine sulfate).

*Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production*

1. Ethanol.
2. Isopropanol.
3. Aspirin.
4. Vaccines.
5. Chlorhexidine.
6. Calcium hypochlorite.
7. Chlorine dioxide.
8. Sodium hypochlorite.
9. Electrolytes.
10. Glucose.
11. Glycerine.
12. Hydrogen peroxide.
13. Iodine.
14. Magnesium sulfate.
15. Oxytocin.
16. Ivermectin.
17. Phosphoric acid.
18. Copper sulfate.
19. Iodine.
20. Lidocaine.
21. Lime, hydrated.
22. Mineral oil.
23. Procaine.
24. Trace minerals.
25. Vitamins.
26. EPA List 4—Inerts of Minimal Concern.

*Section 205.604 Nonsynthetic Substances Prohibited for Use in Organic Livestock Production*

1. Strychnine.

*Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s))''*

(a) Nonsynthetics allowed:
1. Alginic acid.
2. Citric acid.
3. Lactic acid.
4. Bentonite.
5. Calcium carbonate.
6. Calcium chloride.
7. Dairy cultures.
8. Diatomaceous earth.
9. Enzymes.
10. Flavors.
11. Kaolin.
12. Magnesium sulfate.
13. Nitrogen-oil-free grades.
14. Oxygen-oil-free grades.
15. Perlite.
16. Potassium chloride.
17. Potassium iodide.
18. Sodium bicarbonate.
19. Sodium carbonate.
20. Carnauba wax.
21. Wood resin wax.
22. Autolysate yeast.
23. Bakers yeast.
24. Brewers yeast.
25. Nutritional yeast.
26. Smoked yeast.

(b) Synthetics allowed:
1. Alginates.
2. Ammonium bicarbonate.
3. Ammonium carbonate.
4. Ascorbic acid.
5. Calcium citrate.
6. Calcium hydroxide.
7. Monobasic calcium phosphates.
8. Dibasic calcium phosphates.
9. Tribasic calcium phosphates.
10. Carbon dioxide.
11. Calcium hypochlorite.
12. Chlorine dioxide.
13. Sodium hypochlorite.
14. Ethylene.
15. Ferrous sulfate.
16. Monoglycerides.
17. Diglycerides.
18. Glycerin.
19. Hydrogen peroxide.
20. Lecithin—bleached.
21. Magnesium carbonate.
22. Magnesium chloride.
23. Magnesium stearate.
24. Nutrient vitamins.
25. Nutrient minerals.
26. Ozone.
27. Pectin (low-methoxy).
28. Phosphoric acid.
29. Potassium acid tartrate.
30. Potassium carbonate.
31. Potassium citrate.
32. Potassium hydroxide.
33. Potassium iodide.
34. Potassium phosphate.
35. Silicon dioxide.
36. Sodium citrate.
37. Sodium hydroxide.
38. Sodium phosphates.
39. Sulfur dioxide.
40. Tocopherols.
41. Xanthan gum.

*Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as ''Organic''*

1. Cornstarch (native).
2. Gums—water extracted only (arabic, guar, locust bean, carob bean).
3. Kelp—for use only as a thickener and dietary supplement.
4. Lecithin—unbleached.
5. Pectin (high-methoxy).

*Nonrenewals*

This final rule amends the USDA's National List by removing exemptions (and any restrictive annotations) for the following substances in organic agricultural production and handling:

*Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production*

Milk replacers without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals.

*Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s))''*

Colors—nonsynthetic sources only.
Potassium tartrate made from tartaric acid.

*Error in Proposed Rule*

In review of the proposed rule, the Secretary identified that carrageenan was included in the proposal as an exemption set to expire on October 21, 2007. This is not correct. Carrageenan was amended to the National List on October 31, 2003 (68 FR 61987) and has an expiration date of October 31, 2008, not October 31, 2007. As a result, the renewal of carrageenan will not be carried out through this rulemaking. The exemption will remain in effect on the National List until October 31, 2008. Continued use of the exemption after such date will be contingent upon future rulemaking.

**III. Related documents**

One advanced notice of proposed rulemaking with request for comments was published in **Federal Register** Notice 70 FR 35177, June 17, 2005, to make the public aware that the

allowance of 169 synthetic and non-synthetic substances in organic production and handling will expire, if not reviewed by the NOSB and renewed by the Secretary. On March 6, 2007, a proposed rule with request for comments was published in **Federal Register** Notice 72 FR 9872.

**IV. Statutory and Regulatory Authority**

The OFPA, as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop*.

*A. Executive Order 12866*

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

*B. Executive Order 12988*

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 6514(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 6503 through 6507 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 6519(f) of the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 6520 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. This action would reauthorize certain provisions of the National List to provide small entities continued access to tools that they can use in day-to-day operations. The AMS concludes that the economic impact of this final rule, if any, would be minimal and entirely beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. This final rule would have an impact on a substantial number of small entities.

Based upon USDA's Economic Research Service and AMS data compiled from 2001 to 2005, the U.S. organic industry at the end of 2005 included nearly 8,500 certified organic crop and livestock operations, plus more than 2,900 handling operations. Organic crop and livestock operations reported certified acreage totaling more than 4.05 million acres of organic farm production. Total number of organic crop and livestock operations increased by more than 18 percent from 2001 to 2005, while total certified acreage more than doubled during this time period. AMS estimates that these trends continued through 2006 and will be higher in 2007.

U.S. sales of organic food and beverages have grown from $1 billion in 1990 to nearly $17 billion in 2006. Organic food sales are projected to reach $23.8 billion for 2010. The organic industry is viewed as the fastest growing sector of agriculture, currently representing nearly 3 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year including a 22 percent increase in 2006.

In addition, USDA has accredited 99 certifying agents who have applied to USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the NOP Web site, at *http://*

*www.ams.usda.gov/nop*. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

*D. Paperwork Reduction Act*

Under the OFPA, no additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

*E. Received Comments on Proposed Rule AMS–TM–06–0222*

AMS received 11 comments on proposed rule AMS–TM–06–0222. Comments were received from organic consumers, trade associations, organic handlers, ingredient manufacturers, and one foreign government. In general, comments were in support of the proposed rule. One commenter questioned of whether AMS had made errors in listing certain proposed substances under § 205.601 by duplicating entries. Specifically, the commenter questioned whether hydrogen peroxide, newspaper or other recycled paper, elemental sulfur, horticultural oils, and lignin sulfonate were duplicates and entered in error. In response to the concern expressed by the commenter, AMS did not list the aforementioned substances in error. The substances appear twice under § 205.601 of the National List because they have multiple uses. For example, hydrogen peroxide is authorized and listed for use under § 205.601(a) as an algicide, disinfectant, and sanitizer. It is also authorized and listed for use under § 205.601(i) as a plant disease control.

A few commenters requested that certain proposed exemptions be discontinued due to the assertions that the substances were either (1) nonsynthetic and did not require identification on the National List or (2) were no longer necessary for organic production due to the presence of an alternative. USDA believes that these comments did not provide sufficient information/documentation to support the assertions. We recommend that the commenters submit petitions to the NOSB and have the substances of interest reviewed through the National List review process.

A foreign government requested that the Secretary provide scientific justification for the use of Potassium bicarbonate, Humic acids, Lignon sulfonoate, and liquid fish products in organic production. The comment noted that such substances are not included in Annex 2 of the Codex Guidelines for Organically Produced Foods or do not meet Section 5 of the Codex Guidelines. The foreign government also requested the Secretary to explain why the NOSB did not consider removing the prohibition on the use of ''Ash from manure burning'' as they believe its use complies with the principles of organic production. Lastly, they requested an explanation as to why the exemption for nonsynthetic colors was proposed for removal from the National List whereas the exemption for nonsynthetic flavors was proposed for retention.

In response to the comments regarding Potassium bicarbonate, Humic acids, Lignon sulfonate, and liquid fish products, these substances have been determined by the NOSB and the Secretary to meet national statutory and regulatory provisions regarding the use of substances in organic agriculture (the OFPA). In addition, the USDA does not believe that such substances are inconsistent with the Codex Guidelines. The Guidelines provide that national governments take the following criteria into consideration when making determinations on the addition of substances to their National Lists: (1) Substances are consistent with principles of organic production as outlined in these Guidelines; (2) use of the substance is necessary/essential for its intended use; (3) manufacture, use and disposal of the substance does not result in, or contribute to, harmful effects on the environment; (4) they have the lowest negative impact on human or animal health and quality of life; and (5) approved alternatives are not available in sufficient quantity and/or quality. All of these have been criteria have been taken into consideration for determining the whether Potassium bicarbonate, Humic acids, Lignon sulfonate, and liquid fish products are compatible with organic systems of agriculture.

In addition, the foreword to Annex 2 of the Codex Guidelines provides that ''The following lists (Annex 2: Tables 1, 2, 3, and 4) do not attempt to be all inclusive or exclusive, or a finite regulatory tool, but rather provide advice to governments on internationally agreed inputs.'' Therefore, we believe that the absence of a substance from Annex 2 of the Codex Guidelines does not mean that the substance is inconsistent with the Codex Guidelines. Instead, we believe that the Codex Guidelines are more focused on the system of review and criteria utilized by national governments to accept or reject the use of substances in organic agriculture. Our National List review system embodies the criteria of the Codex Guidelines; it also engages science, public interests/comments, and federal agency consultations that help contribute to well-informed decision-making.

In response to the foreign government's comment on why the NOSB did not consider removing the prohibition on the use of ''Ash from manure burning,'' the NOSB, based on input from the public, did not believe the prohibition on the use of ''Ash from manure burning'' should be lifted. Manure ash was originally prohibited due to the environmental impact of its manufacture and its adverse impact on soil quality when compared with compost and raw manure.

Lastly, with respect to the foreign government's question as to why the exemption for nonsynthetic colors was proposed for removal from the National List whereas the exemption for nonsynthetic flavors was proposed for retention, the NOSB voted not to renew the exemption to permit the use of nonsynthetic colors in organic handling because the substance category (nonsynthetic colors) had never received a formal recommendation from the NOSB to be included on the National List during the promulgation of the NOP regulations. Nonsynthetic colors were erroneously included in the final rule. As a result, the NOSB received several comments to remove the category of nonsynthetic colors from the National List, as nonsynthetic colors should be evaluated by the NOSB through the petition process.

The NOSB took comments into account that raised concern about how the broad category of ''nonsynthetic colors'' produces difficulty in determining and verifying what colors are truly nonsynthetic versus synthetic and how such ambiguity could give rise to the use of inappropriate substances in organically handled products. In addition, the NOSB also deliberated on the historical fact that nonsynthetic colors had been permitted for use by the organic industry for over five years. As a result, commenters raised a general concern that removing nonsynthetic colors from the National List could cause a disruption in the manufacture of organic products in the organic handling sector. Taking all of these concerns into consideration, the NOSB

considered that in the absence of an initial recommendation from the NOSB to permit the addition of nonsynthetic colors as a broad category that they could not continue to permit the exemption of nonsynthetic colors on § 205.605(a). As a result, the NOSB voted not to renew the exemption of nonsynthetic colors on § 205.605(a).

*F. Effective Date*

This final rule reflects recommendations submitted to the Secretary by the NOSB for the purpose of fulfilling the requirements of 7 U.S.C. 6517(e) of the OFPA. 7 U.S.C. 6517(e) requires the NOSB to review each substance on the National List within 5 years of its publication. The substances being reauthorized for use on the National List were initially authorized for use or prohibition in organic agriculture on October 21, 2002. Because these substances are critical to organic production and handling operations, producers and handlers should be able to continue to use them beyond their 5-year expiration date of October 21, 2007. Accordingly, this rule shall be effective on October 21, 2007.

**List of Subjects in 7 CFR Part 205**

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

■ For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is amended as follows:

## PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

**Authority:** 7 U.S.C. 6501–6522.

■ 2. Section 205.603 is revised to read as follows:

**§ 205.603 Synthetic substances allowed for use in organic livestock production.**

In accordance with restrictions specified in this section the following synthetic substances may be used in organic livestock production:

(a) As disinfectants, sanitizer, and medical treatments as applicable.

(1) Alcohols.

(i) Ethanol-disinfectant and sanitizer only, prohibited as a feed additive.

(ii) Isopropanol-disinfectant only.

(2) Aspirin-approved for health care use to reduce inflammation.

(3) Biologics—vaccines.

(4) Chlorhexidine—allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.

(5) Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

(6) Electrolytes—without antibiotics.

(7) Glucose.

(8) Glycerine—allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.

(9) Hydrogen peroxide.

(10) Iodine.

(11) Magnesium sulfate.

(12) Oxytocin—use in postparturition therapeutic applications.

(13) Paraciticides. Ivermectin-prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period for breeding stock.

(14) Phosphoric acid—allowed as an equipment cleaner, *Provided,* That, no direct contact with organically managed livestock or land occurs.

(b) As topical treatment, external parasiticide or local anesthetic as applicable.

(1) Copper sulfate.

(2) Iodine.

(3) Lidocaine—as a local anesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(4) Lime, hydrated—as an external pest control, not permitted to cauterize physical alterations or deodorize animal wastes.

(5) Mineral oil—for topical use and as a lubricant.

(6) Procaine—as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(c) As feed supplements. None.

(d) As feed additives.

(1) DL–Methionine, DL–Methionine-hydroxy analog, and DL–Methionine-hydroxy analog calcium (CAS #59–51–8; 63–68–3; 348–67–4) for use only in organic poultry production until October 21, 2008.

(2) Trace minerals, used for enrichment or fortification when FDA approved.

(3) Vitamins, used for enrichment or fortification when FDA approved.

(e) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or a synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

(1) EPA List 4—Inerts of Minimal Concern.

(2) [Reserved]

(f)–(z) [Reserved]

**§ 205.605 [Amended]**

■ 3. In § 205.605, substances ''colors, nonsynthetic sources only'' is removed from paragraph (a) and the substance ''Potassium tartrate made from tartaric acid'' is removed from paragraph (b).

Dated: October 10, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–20326 Filed 10–15–07; 8:45 am]

**BILLING CODE 3410–02–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30, 31, 32, and 150

**RIN 3150–AH41**

### Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending several regulations governing the distribution of byproduct material. The reporting requirements for licensees distributing byproduct material to persons exempt from licensing are being changed, obsolete provisions are being deleted, certain regulatory provisions are being clarified, and smoke detector distribution regulations are being simplified. In addition, this final rule modifies the process for transferring a generally licensed device for use under a specific license. Aspects of this rule will affect distributors of exempt byproduct material, some general licensees, and some users of exempt products. These actions are intended to

make the licensing of distribution to exempt persons more effective and efficient, reduce unnecessary regulatory burden to certain general licensees, and better ensure the protection of public health and safety.

**DATES:** *Effective Date:* This final rule is effective on December 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Andy Imboden, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2327, *asi@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**



## I. Background

### *A. Introduction*

The Commission has authority to issue both specific and general licenses for the use of byproduct material, and also to exempt byproduct material from regulatory control under section 81 of the Atomic Energy Act of 1954, as amended (hereafter, ''the Act'' or the AEA). In considering its exemptions from licensing, the Commission is directed by the Act to make ''a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.'' To ensure that its exemptions meet the requirements of the Act, the Commission specifies limits for the radiological properties of what is distributed to persons exempt from licensing, and carefully oversees the manufacture and distribution of the approved products and materials.

As beneficial uses of byproduct material were developed and experience grew, new products intended for use by the public were invented, and the regulations were amended to accommodate their use under various exemptions from licensing. These products and materials present very low risks of significant individual doses. However, a substantial portion of the public uses these products—more than 100 million smoke detectors are in use in this country—and as a result, is routinely exposed to some ionizing radiation. Therefore, in the 1990s, the Commission conducted a systematic reevaluation of the exempt materials and products, most of which had been approved before 1970. A major part of the effort was an assessment of the potential and likely doses to workers and the public under the existing regulations governing the distribution of exempt products.

Dose assessments associated with most exempt products can be found in NUREG–1717,[1] ''Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials,'' June 2001. Generally, the systematic assessment of exemptions determined that no significant problems exist with the current uses of byproduct materials under the exemptions from licensing. Actual exposures of the public likely to occur are in line with Commission policy concerning acceptable doses from exempt products and materials. For some exempt products, there was a significant difference between potential and likely doses because the use of the exempt product is limited (or nonexistent) or significantly lower quantities are used in products than is potentially allowed under the exemption.

The Commission is also revising a certain general license within this final rule. General licenses are provided by regulation, grant authority to a person for certain activities involving byproduct material, and are effective without the filing of an application with the Commission or the issuance of licensing documents to particular persons. Separate and distinct from either exemptions or specific licenses, general licenses are designed to be commensurate with the specific circumstances covered by each general license. However, the NRC has determined that its regulations were not clear with respect to certain transfers of generally licensed devices. This has led to inefficiencies in licensing oversight and may negatively impact public confidence. Thus, the NRC is clarifying and simplifying its regulations related to this issue.

This final rule reflects the Commission's goals to make its regulations more flexible, user-friendly, and performance-based, and to improve its ability to risk-inform its regulatory program. These concepts continue to be considered in developing potential revisions to the regulatory program in the area of distribution of byproduct material to exempt persons. To make optimal use of rulemaking resources, both for the NRC and the States who must develop conforming regulations, several issues have been combined into this final rule.

A proposed rule containing these amendments was published for public comment in the **Federal Register** on January 4, 2006 (71 FR 275). The public comment period closed March 20, 2006. Nine comment letters were received. The NRC has considered these comments in this final rule.

### *B. Regulatory Framework*

The Commission's regulations in Part 30 contain the basic requirements for licensing of byproduct material. Part 30 includes a number of regulations that exempt the end user from licensing requirements, so-called ''exemptions.'' Many of these exemptions are product-specific, intended only for specific purposes which are narrowly defined by regulation. More broadly defined are the general materials exemptions, which

[1] NUREG–1717 is a historical document developed using the models and methodology available in the 1990s. The NUREG provides the estimate of the radiological impacts of the various exemptions from licensing based on what was known about distribution of material under the exemptions in the early 1990s. NUREG–1717 was used as the initial basis for evaluating the regulations for exemptions from licensing requirements and determining whether those regulations adequately ensured that the health and safety of the public were protected consistent with NRC policies related to radiation protection. The agency will not use the results presented in NUREG–1717 as a sole basis for any regulatory decisions or future rulemaking without additional analysis.

Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee at the NRC public Document Room, One White Flint North, 11555 Rockville Pike, Public File Area O1–F21, Rockville, MD.

allow the use of many radionuclides in many chemical and physical forms subject to limits on activity, and which are specified in §§ 30.14 and 30.18 for exempt concentrations and exempt quantities, respectively. The Commission's regulations also include two class exemptions—for self-luminous products and gas and aerosol detectors, in §§ 30.19 and 30.20, respectively—which cover a broad class of products not limited to certain quantities or radionuclides. Under the class exemptions, many products can be approved for use through the licensing process if the applicant demonstrates that the specific product is within the class and meets certain radiation dose criteria.

Part 31 provides general licenses for the use of certain items containing byproduct material and the requirements associated with these general licenses.

Part 32, Subpart A, sets out requirements for the manufacture or initial transfer (distribution) of items containing byproduct material to persons exempt from licensing requirements.

Part 150 sets out regulations for all States that have entered into agreements with the Commission under subsection 274b of the Act.

**II. Discussion**

This final rule makes a number of revisions to the regulations governing the use of byproduct material under exemptions from licensing and under general license, and to the requirements for those who distribute products and materials for use under exemptions from licensing. The changes are intended to better ensure the protection of public health and safety and improve the efficiency and effectiveness of certain licensing actions.

*A. Improved Reporting of Distribution to Persons Exempt From Licensing Requirements*

The reporting and recordkeeping requirements for distributors of products containing byproduct material to persons exempt from licensing in Part 30 are being amended to improve the quality of data available to the NRC. The changes set forth in this rule have been made in such a way that there is an insignificant effect on these licensees' reporting and recordkeeping burdens. The reporting and recordkeeping requirements for these distributors are found in §§ 32.12, 32.16, 32.20, 32.25(c), and 32.29(c).

Before 1983, reporting of transfers of exempt byproduct material was required on an annual basis. The NRC amended its regulations in 1983 to change the reporting requirement to once every 5 years to minimize administrative burden. The 1983 reporting regulations required that an additional materials transfer report be submitted when filing for license renewal or notifying the NRC of a decision to cease licensed activities. However, subsequent experience with the 5-year reporting frequency has shown that it does not provide the NRC with complete, accurate, or timely information on products and materials containing byproduct material distributed for use under exemptions from licensing.

A 5-year reporting cycle does not produce timely information for the NRC to fully determine the products and amount of byproduct material distributed annually for exempt use. The lack of timely information limits the NRC's ability to evaluate the overall net impact of such distribution on public health and safety. Because the date of reporting for each licensee is different and the information is not necessarily reported by year, it is difficult to estimate the amount or types of exempt products containing byproduct material distributed each year or to detect emerging trends. A 5-year reporting period also negatively affects the availability of current information. The limitations of the information about the products and materials and quantities distributed for use under exemption greatly impacted the effort involved in developing the dose assessments in NUREG–1717 and contributed to uncertainties in the results.

Reevaluation of the reporting requirements suggests that annual reporting may also be administratively more efficient than a 5-year cycle for both the NRC and licensees. There have been more implementation problems with the longer cycle than with annual reporting. For example, because of the long interval between reports, licensees frequently neglect to file reports in compliance with the regulations. This lapse sometimes results in the need for the NRC to request that additional information be sent so that an application for renewal or termination of license can be processed. The long interval between reports also may lead to licensee inefficiencies in collecting the data. Routine annual reporting should be more straightforward and easier for licensees to comply with than consolidating and reporting 5 years of distribution information.

This final rule requires that material transfer reports covering transfers made during the calendar year be submitted annually by January 31 of the following year. In the first report made after the change, licensees are being required to submit information on transfers made since the previous report, so that there are no gaps in coverage. The requirements added in 1983 for licensees to file a special material transfer report when filing for license renewal (contained in the existing §§ 32.12, 32.16, 32.20, 32.25, and 32.29) are being deleted. Another change is being made to the same sections so that material transfer reports are required 30 days after ceasing authorized activities, rather than at the point of notifying the Commission of the decision to cease authorized activities.

In addition to the lengthy period between the 5-year reports, the manner in which product information and licensee information has been submitted in the reports has not always been clear, making the data more difficult to use. This final rule modifies how information is to be provided, improving clarity by making the reporting provisions more specific. Under the revised provisions, as specified in §§ 32.12(a)(1), 32.16(a)(1), 32.20(b)(1), 32.25(c)(1), and 32.29(c)(1), the report must clearly identify the specific licensee submitting the report, including the license number. In addition, as specified in §§ 32.12(a)(2), 32.16(a)(2), 32.20(b)(2), 32.25(c)(2), and 32.29(c)(2), the report is required to reference the specific exemption provision under which the products or materials are being distributed.

The current regulations require that the licensee must identify the distributed product; however, different licensees have complied with this requirement in a number of ways, some of which necessitated that the NRC obtain additional information to fully interpret what was being distributed. Licensees have frequently included model numbers in the reports, but often as the only identification of the type of product being transferred. This final rule adds the requirement to report model numbers, when applicable, as part of the required information.

Other changes are being made to reduce the licensees' reporting and recordkeeping burden. Under the prior framework, licensees were required to send a copy of the transfer reports to both the NRC headquarters and the appropriate Regional office. The requirement to send a copy of the reports to the Regional offices will be removed. Instead, the information will be distributed by the NRC internally to the appropriate personnel. To make the NRC's internal document handling more efficient, the address to which reports are to be sent will contain the line,

''ATTN: Document Control Desk/ Exempt Distribution.'' The addressee also has been changed from that specified in the proposed rule to be consistent with the recent reorganization of the NRC's materials programs. Finally, the period for which licensees must retain records, i.e., 1 year after transfers are included in a report, will be up to 4 years shorter than under the existing requirements. These factors are expected to make the reporting process more efficient and to improve the quality of the information submitted.

As a result of these changes, the NRC expects to receive information on distribution to exempt persons that is more useful for evaluating both potential individual doses to the public from multiple sources and collective doses to the public from these products and materials than that provided under the previous requirements. The NRC will have a stronger basis for informing the public about these exposures. These changes also will provide a better basis for considering any future regulatory changes in this area and for allocating NRC resources.

*B. NRC Licensing of the Introduction of Exempt Concentrations*

For most exemptions from licensing in Part 30, distributors must have an NRC license even if they are in Agreement States. There are two exemptions for which this is not the case. One obsolete exemption, § 30.16, ''Resins containing scandium-46 and designed for sand-consolidation in oil wells,'' is being removed by this final rule, as discussed in section II.D of this document. The other exception to NRC-only licensing of distribution of exempt byproduct material is in § 30.14, ''Exempt concentrations.''

The exempt concentration exemption in § 30.14 is a general materials exemption, broadly defined and not limited to a particular use. The exemption allows for various practices to be evaluated on a case-by-case basis through the licensing process. Section 30.14, paragraph (c), contains an exemption from licensing by the NRC for manufacturers, processors, or producers in Agreement States if the introduction of byproduct material into their product or material is conducted by an NRC specific licensee whose license authorizes this introduction.

Previously, there were provisions in the NRC's regulations that allowed Agreement State licensing of the introduction of exempt concentrations. Agreement State licensing was added in 1963, soon after the regulations governing the Agreement State program were established the previous year (10 CFR part 150 was established in 1962). At the time, the only practices being regulated under these provisions related to quality control procedures and other radiotracer activities. Byproduct material was permitted to be introduced into oil, gasoline, plastics, and similar commercial and industrial materials. Also, at the time these provisions were added, it was expected that the NRC and the Agreement States would develop a system to obtain copies of the transfer reports submitted to the different regulatory bodies by licensees so that the NRC would have national information on distribution. Such a system was never implemented.

All practices involving exempt concentrations result in increased radioactivity in the products. A number of different practices have been evaluated and conducted under § 32.11, including the neutron irradiation of gemstones, silicon semiconductor materials, and luggage and cargo in explosive detection systems. These practices did not exist in the early 1960s, and involve consideration of issues including extensive national distribution. These practices involve a more complex dose evaluation than did the earlier practices, which were characterized by a single radionuclide dispersed within a product. For the case of irradiation of gemstones, the NRC has since required authorization only by an NRC license.

It is important for the NRC to obtain information on all distributions of byproduct material to exempt persons in order to effectively and efficiently assess the overall impact of such distributions on the public. NRC licensing of all such distribution will facilitate this goal. Also, the concentration limits in § 30.70 do not provide the sole assurance of protection of public health and safety. The evaluation done in connection with the licensing process is also important. The previous regulatory framework allowing multiple licensing jurisdictions to have the authority to issue these licenses had the potential to result in inconsistency in the licensing process.

A regulatory framework in which there is one licensing authority is inherently more efficient than a framework with multiple jurisdictions from an administrative standpoint. A sole licensing authority automatically would possess data on the nationwide amount of byproduct material introduced into products distributed to the general public. In addition, because the introduction of exempt concentrations is a rarely used exemption, NRC-only licensing would avoid a situation in which every Agreement State would have to maintain resources, regulations, and procedures to license this practice, despite the fact that it would be unlikely for any individual State to have a significant number of these licensees.

This final rule requires that the entity introducing byproduct material into products and materials for use under the exempt concentration provisions must have an NRC license specifically authorizing this practice. Specifically, the final rule changes §§ 32.11 and 32.12 to compatibility category NRC. Compatibility categories and their meanings are explained in Section VI, ''Agreement State Compatibility.'' This change necessitates conforming amendments to related paragraphs (§§ 30.14(c), 30.14(d), 32.11, 32.13, and 150.20) so that only NRC may authorize the introduction of byproduct material into products and materials to be distributed for use under § 30.14.

Consistent with the practice for other exempt byproduct material distribution, a person introducing byproduct material into products and materials for use under the exempt concentration provision may have possession and use of the byproduct material authorized by an Agreement State and a distribution license from the NRC. To accommodate this framework, § 32.11 is revised to exempt Agreement State licensees from § 30.33(a)(2) and (3), so as not to duplicate the licensee's Agreement State license conditions associated with possession and use.

Currently, the only known entities licensed under § 32.11 (or equivalent Agreement State regulations) are a small number of radiotracer firms, licensed by the NRC, who introduce byproduct material into material like gas and oil, and steel companies who use sources to monitor refractory lining wear in blast furnaces. No Agreement State licensees of these types were identified by the NRC in 2002, when the States were asked to comment on the rulemaking plan, or in 2005, when the NRC was assessing potential effects of this rule.

Changing the licensing of introduction of exempt concentrations to NRC-only in this regulation will allow the NRC to obtain complete national data on products and materials containing byproduct material distributed to persons exempt from licensing and regulation. In addition, because the NRC licenses all other distributions of exempt material, NRC-only licensing of introduction of exempt concentrations will be consistent with the other types of exempt distribution. Since no Agreement State licensees have been identified who introduce

byproduct material into products received by persons exempt from licensing under § 30.14, there should be no impact on distributors as a result of this change.

A person who introduces byproduct material into materials or products distributed to persons exempt from licensing under § 30.14 must, as a result of this rule, hold a license from the NRC under § 32.11. Under § 30.14, the byproduct material activity concentration applicable to this practice must be less than the limits established by § 30.70, ''Schedule A—Exempt concentrations.''

*C. Bundling of Exempt Quantities*

In accordance with § 30.18, ''Exempt quantities,'' a person is exempt from the requirements for a license to the extent that the person receives, possesses, uses, transfers, owns, or acquires byproduct material in individual quantities, each of which does not exceed the applicable quantity in § 30.71, Schedule B. This exemption is being amended to explicitly prohibit the end user from combining, or ''bundling'' multiple sources. Commercial distributors of exempt quantities are presently prohibited from incorporating the exempt byproduct material into any manufactured or assembled commodity, product, or device by regulation (under § 32.18, ''Manufacture, distribution and transfer of exempt quantities of byproduct material''). However, until this final rule, there had been no regulation prohibiting the end-user from bundling sources.

The NRC became aware that some persons holding byproduct material under the general materials exemption in § 30.18 had been combining (bundling) multiple exempt quantities within an individual device that had not been evaluated or approved by the NRC. The devices were manufactured without any radioactive material, but were designed to be used with multiple exempt quantity sources of byproduct material. After becoming aware of this issue, the NRC originally determined in June 1994 that, under certain limited circumstances, the bundling of exempt sources did not present a health and safety hazard and therefore no action was taken. Later, the NRC became concerned that the number of exempt sources bundled in unlicensed devices could reach a point where a general or specific license would otherwise be required. As long as the bundled sources were considered exempt, the NRC would have no mechanism to ensure their safe possession, use, and disposal. As a result, the NRC issued Generic Letter 99–01, ''Recent Nuclear Material Safety and Safeguards Decision on Bundling Exempt Quantities,'' on May 3, 1999, to clarify that bundling was not appropriate under the existing regulation. This position was supported by the language in § 32.19(d)(2), which directs the distributor to provide a label or accompanying brochure with any distributed exempt quantities that includes the statement ''Exempt Quantities Should Not Be Combined.'' However, the NRC has since concluded that the regulations in § 30.18 should be amended to specifically prohibit bundling by the end user under the exemption. This final rule revises the exempt quantities provision in § 30.18 to explicitly prohibit combining sources to create an increased radiation level.

The original basis for the quantities chosen for the exemption in § 30.18 was the more restrictive of: (1) The quantity of material inhaled by a reference individual exposed for 1 year at the highest average concentration permitted in air for members of the general public in unrestricted areas, or (2) for gamma emitters, the quantity of material that would produce a radiation level of 1 mR/hr at 10 cm from a point source. This basis provides reasonable assurance of protection because, under the conditions of the exemption, it is unlikely that any individual would inhale (or ingest) more than a very small fraction of any radioactive material being used or receive excessive doses of external radiation when realistic source-to-receptor distances and exposure times are assumed. Should bundling be permitted, the NRC could not assure that the exposures would not exceed the levels originally intended under the exemption. In addition, there would be the potential for other undesirable consequences, such as the disposal of devices containing multiple exempt sources through ordinary commercial waste streams or metal recycling channels resulting in inappropriate contamination of property.

Because of the NRC's 1994 determination that, under certain limited circumstances, bundling of exempt sources did not present a health and safety hazard, the May 3, 1999, generic letter affirmed that the NRC did not plan to take any action regarding the devices initially produced for use with a limited number of exempt quantity sources or their users unless a radiological safety hazard were to be identified. The NRC has no indication that significant exposures are resulting or will result from the continued use of the devices evaluated in 1994, therefore this rule will allow continued exempt use of those devices distributed before 1999. This exclusion is intended to avoid imposing a regulatory burden on those persons (if any are still using the devices) who otherwise might be impacted by this clarification in the regulation who are continuing to use devices in use before the generic letter was issued. Additionally, this regulation is not intended to impact normal storage methods of the materials held under the exemption in § 30.18.

*D. Obsolete Provisions*

Some exemptions from licensing are considered obsolete in that no products are being distributed for use under the exemption. In some cases, no products covered by the exemption remain in use. In others, there are no records of any products ever having been used. Generally, this has occurred because new technologies have made the use of radioactive material unnecessary or less cost-effective.

The Commission is deleting exemptions for products that are no longer being used or manufactured, or revising the regulations to restrict further distribution while allowing for the continued possession and use of previously distributed items. Obsolete exemptions in part 30 were for: automobile lock illuminators (formerly § 30.15(a)(2)), balances of precision (§ 30.15(a)(3)), automobile shift quadrants (formerly § 30.15(a)(4)), marine compasses (§ 30.15(a)(5)), thermostat dials and pointers (formerly § 30.15(a)(6)), spark gap irradiators [2] (formerly § 30.15(a)(10)), and resins containing scandium-46 for sand consolidation in oil wells (formerly § 30.16).

Of these, the exemption for resins containing scandium is the only one that could have resulted in significant doses, based on preliminary dose assessments. Because the exemption was no longer being used, the preliminary dose assessments were not refined or included in NUREG–1717. These preliminary estimates indicated a potential for exposures higher than are appropriate for materials being used under an exemption from licensing. The removal of this exemption, as a result of this final rule, provides assurance that health and safety are adequately protected from possible future exempt distribution.

With the exception of resins covered by § 30.16, only the NRC has licensed distributors of these products. The

[2] This particular exemption is for a product designed to minimize spark delay in some electrically ignited commercial fuel-oil burners, and is different than some products referred to as ''spark gaps'' or ''spark gap tubes,'' which are a category of electron tube and exempted by § 30.15(a)(8). No change is being made to § 30.15(a)(8) at this time.

primary bases for determining that products are obsolete are the NRC's records on its licensees. Industry contacts were also used to collect historical information concerning the use of the various products.

For these obsolete exemptions, the specific requirements for manufacturers and initial distributors are being removed in their entirety. These include regulations for the manufacture or distribution of resins containing scandium–46 (formerly § 32.17) and the prototype test procedures for automobile lock illuminators formerly specified in § 32.40 and formerly required by § 32.14(d)(2).

The NRC's research has shown that the distribution of thermostat dials or pointers, spark gap irradiators, and resins containing scandium–46 for sand consolidation in oil wells ceased so long ago that it is highly unlikely that any remain in use. Therefore, the complete removal of these exemptions is not expected to have any negative effect on any persons. In the unlikely event that a person currently possesses any of these products for which the governing regulations have been removed, this action is not intended to change the regulatory status of any products previously distributed in conformance with the provisions of the regulations applicable at the time the device was distributed: the user remains exempt. The distribution of balances of precision and marine compasses has ceased; however, some devices may still be in use. Therefore, these exemptions will not be completely removed. Instead, the regulations have been changed to limit exempt use to previously distributed products.

Deleting these unnecessary and obsolete provisions will simplify the regulations. This action will also eliminate the need for the Commission to reassess the potential exposure of the public from possible future distributions of these products. Agreement State regulations will be shortened as well. Most importantly, eliminating obsolete exemptions adds assurance that future use of products in these categories will not contribute to exposures of the public.

*E. New Product-Specific Exemption for Smoke Detectors*

One of the most widely distributed products used under an exemption from licensing is the ionization chamber smoke detector. From April 1969 until this final rule, smoke detectors have been used under the class exemption for gas and aerosol detectors in § 30.20 (and equivalent regulations of the Agreement States). The Commission established this class exemption so that detectors with similar purposes could be licensed for distribution without the need for establishing many product-specific exemptions through extensive rulemaking procedures. For example, the class exemption in § 30.20 has also been successfully used to cover new chemical agent detectors.

Modern ionization chamber smoke detectors have been manufactured and used for many years, with consistency in the design of products. Earlier smoke detector designs sometimes incorporated larger amounts of radioactive material than what is typical today, and in some cases incorporated other radionuclides—such as radium–226—whereas americium–241 is the only radionuclide that is widely used in these devices today. Current designs are very consistent, in that they almost always entail using 1 μCi or less of americium–241, contained in a foil, and surrounded by an ionization chamber.

Potential doses from the distribution, use, handling, and disposal of these detectors have been estimated in NUREG/CR–1156, ''Environmental Assessment of Ionization Chamber Smoke Detectors Containing Am–241,'' November 1979, and more recently in NUREG–1717 (2001). Dose assessments have been performed in numerous license applications under the existing class exemption structure. The estimated doses under normal, routine conditions are well under the safety criterion for routine use of 5 mrem/year (5 μSv/year) whole body, and the associated individual organ limits.

Because the doses from smoke detectors are well understood, and modern designs are very consistent, this rule establishes a product-specific exemption from licensing requirements for smoke detectors. This is intended to apply to ionization chamber smoke detectors containing no more than 1 μCi (37 kBq) of americium-241 in the form of a foil, and whose primary function is the protection of life and property. Based on records of currently active device designs,[3] there are 106 smoke detector models that are approved for distribution under the class exemption. Of these, 92 percent (97 out of 106) appear to qualify for the new product-specific exemption because those devices are limited to no more than the amount 1 μCi of americium-241 in the form of a foil. The new product-specific exemption for ionization chamber smoke detectors is established as § 30.15(a)(7).[4] The requirements for licensees (and applicants) to distribute these products are contained in §§ 32.14, 32.15, and 32.16, as revised by this final rule.

The primary difference between this new exemption and the existing class exemption in § 30.20 is that an applicant for a license to distribute smoke detectors for use under the new exemption would not be required to submit dose assessments to demonstrate that doses from the various stages of the life cycle of the product do not exceed certain values. The applicant would still be required to submit basic design information consistent with that required from applicants to distribute products for use under other product-specific exemptions, specifically for those products used under § 30.15. The specific requirements for obtaining a license to manufacture, process, produce, or initially transfer gas and aerosol detectors intended for use under the existing class exemption in § 30.20 are contained in § 32.26. Conditions of these licenses are contained in § 32.29, and include requirements for quality control, labeling, recordkeeping, and the reporting of transfers. The safety criteria (contained in §§ 32.27 and 32.28) for the existing class exemption include: (1) Radiation dose limits for individuals from normal handling, storage, use, and disposal of these products; and (2) radiation dose limits for individuals, in conjunction with approximate associated probabilities of occurrence, for accidents.

The primary emphasis of the new requirements imposed on the applicant is to provide assurance that the byproduct material is properly contained within the product and will not be released under the most severe conditions encountered in normal use and handling. Requirements for those licensed to distribute smoke detectors to be used under the new product-specific exemption are contained in §§ 32.15 and 32.16. These regulations denote the quality assurance, labeling, recordkeeping, and reports of transfer. The labeling requirements for the existing class exemption are found in § 32.29(b), and to make the product-specific labeling requirements

[3] Data taken from the sealed source and device (SS&D) registry September 2006.

[4] Section 30.15(a)(7) had been used before to provide an exemption for a different product. A product-specific exemption from licensing was provided in § 30.15(a)(7) for ''glow lamps'' in the 1960s. Later, it was determined that glow lamps should be exempted along with other types of electron tubes under § 30.15(a)(8), and § 30.15(a)(7) was removed. See 34 FR 6651 (April 18, 1969). Because § 30.15(a)(7) has not been used in such a long time, no confusion is expected from this designation for the product-specific exemption for smoke detectors.

equivalent to those of the class exemption, minor amendments were made to § 32.15.

The NRC believes that an applicant who wishes to distribute a qualifying smoke detector will find the process easier and less expensive under the new product-specific exemption than under the class exemption. Compared with the existing class exemption, under the new exemption, license applicants are not required to perform and submit dose assessments to demonstrate that doses from the various stages of the life cycle of the product do not exceed certain values. It is the NRC staff's licensing practice to issue licenses for the distribution of products to be used under a class exemption only after a sealed source and device (SS&D) review and registration of the model in the SS&D registry. Detectors to be used under the new product-specific exemption will not be required to undergo the SS&D review, and devices qualifying for a product-specific exemption may be distributed without an SS&D certificate. As a result, distributors of qualifying smoke detectors will be in a different fee category for the application and annual fees, and likely will be charged lower fees. Relevant application fees both with or without SS&D review and registration are published in § 170.31. Annual fees for licensees distributing devices both with or without SS&D registration are published in § 171.16. Although the fees vary, and future fees are difficult to project with accuracy, the fees are typically more expensive if an SS&D review and registration is needed. Consistent with the requirements of the other product-specific exemptions, the applicant for a license to distribute under the new exemption is required to submit basic design information. However, compared with the process established for the existing class exemption, under the new exemption a sealed source and device certificate need not be obtained (or maintained) to distribute smoke detectors that meet the requirements of the new exemption.

The new product-specific exemption allows licensees a new option for distributing smoke detectors to the public that is less costly. It is not compulsory for all smoke detectors to be manufactured and distributed for use only under the new product-specific exemption. Furthermore, this final rule does not modify the existing regulation exempting users of smoke detectors from licensing (§ 30.20). A smoke detector manufacturer that produces devices that do not conform with the product-specific exemption (for example, if the devices contain 4 μCi, or another radionuclide such as nickel-63) may distribute them under the broader class exemption for gas and aerosol detectors.

The net effect of this new product-specific exemption is that the regulatory burden and fees are reduced for applicants for licenses to distribute qualifying ionizing chamber smoke detectors. Licensees who currently distribute qualifying smoke detectors (1 μCi or less of americium-241 in the form of a foil) for use under the class exemption, may also realize benefits if they amend their licenses to distribute the devices under the new product-specific exemption. Additionally, the change is expected to reduce the NRC staff time needed to review these applications, because an evaluation of dose assessments is no longer necessary. Given the wide distribution these products have already experienced, this change is not expected to affect the overall number of smoke detectors distributed in the future. Thus, this change improves the efficiency of the regulatory process, without any impacts to the health and safety of the public or the environment.

*F. Specific Licenses and Generally Licensed Devices—Clarification*

A device possessed and used under § 31.5 is a generally licensed device. An entity who holds a specific license may use and possess such a device under the authority of the general license provided by regulation, or, if certain requirements are met, the entity may transfer the device to the authority provided by its specific license. This final rule amends § 31.5 to explicitly state the actions necessary to successfully perform this type of transfer, and eliminates the need to obtain prior NRC approval.

Following a revision to the general license provided by § 31.5 (65 FR 79161; December 18, 2000) that became effective in February 2001, an increased number of specific licensees transferred their authorization to possess and use some devices under the § 31.5 general license to the authority provided by their specific license. Licensees were motivated to transfer their devices in this way primarily to avoid the newly established registration fees. There are also other, non-fee-related reasons why one would make such a transfer. It should be noted that this final rule does not compel eligible licensees to make this type of transfer.

There has been some confusion about the licensee's responsibilities in enacting such a transfer. A necessary condition for this type of transfer is that the licensee must verify that the conditions of the specific license authorize the possession and use of the device. If the specific license does not authorize the possession of the particular radionuclides or activity, the licensee is unable to transfer a generally licensed device to its specific license. For example, the generally licensed device to be transferred may contain americium-241, but the specific license does not authorize the possession of transuranic radionuclides (americium is a transuranic element). If this is the case, the specific licensee must apply for an appropriate amendment to the specific license before transferring the device.

A major issue when transferring a generally licensed device to the authority of a specific license has been the label of the device. The general license in § 31.5, under paragraph (c)(1), requires that the original label on the device be maintained. This label, among other things, indicates the regulatory status (as a generally licensed device), provides safety instructions, and may refer to operating and service manuals. Retaining the label is problematic because, once the device is transferred to the authority of a specific license, instructions to the general licensee may be inappropriate. For example, instructions may indicate that the licensee may not conduct its own leak tests, which is an unnecessary restriction once the device is transferred to the authority of a specific license. Another problem with the label of the transferred device is that the labels of all devices held by a specific licensee must conform with § 20.1904, ''Labeling containers,'' whereas, before the transfer, these requirements were not applicable. It is not acceptable for a device being held under a specific license to be labeled in accordance with § 32.51(a)(3); i.e., a general license label. Thus, if a device is transferred from generally licensed status to the authority of a specific license, the licensee must consider what changes should be made to the labeling and how those changes are to be made. The licensee is responsible for ensuring that the label of the transferred device meets the content requirements of § 20.1904, that any inappropriate restrictions that may have been on the label are resolved, and that any changes to the label are done in a manner that does not damage the device. The licensee must also ensure that the information on the manufacturer, model number, and serial number is retained on the labeling. Persons who have previously transferred generally licensed devices to the authority of their specific license should review the status of the label of

the device, to ensure compliance with § 20.1904 and to resolve any inappropriate restrictions that may have been left on the label.

Another issue when transferring a generally licensed device to the authority of a specific license concerns maintenance. A specific licensee who plans to conduct its own maintenance activities, including required leak tests, must have information concerning the appropriate methods particular to the device. This information may have been provided if the device had been distributed as specifically licensed. However, because the device was generally licensed and, in some cases, the end user was not permitted to perform certain maintenance, this information may not have been provided when the device was obtained. A specific licensee who transfers a generally licensed device to the authority of its specific license and does not already have this information, could contact the manufacturer, a service provider, another knowledgeable licensee, or a regulatory agency to obtain information on the proper procedures for conducting leak testing and other required maintenance activities.

Finally, this final rule simplifies reporting requirements for this type of transfer. Before this rulemaking, two reports were required: A report before the transfer (requesting permission), and a report concurrent with the transfer (reporting the transfer). The NRC believes that there is little benefit in requesting written approval from the NRC before the transfer; therefore, the regulations have been revised. To maintain the integrity of the general license tracking systems operated by the NRC, any transfer of a generally licensed device must be reported, but two reports are not needed. Therefore, § 31.5(c)(8)(iii) is amended so that the pre-transfer report (requesting permission) is no longer required. To keep the appropriate tracking systems up-to-date, it is still necessary for the licensee to file a transfer report per § 31.5(c)(8)(ii).

## III. Summary of Public Comments on the Proposed Rule

The proposed rule on Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements, was published on January 4, 2006 (71 FR 275). The comment period ended on March 20, 2006. Nine letters were received commenting on the proposed rule. One comment letter was submitted by a smoke detector manufacturer, and another by a manufacturer of sources used in smoke detectors. One comment was received from the Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR), representing manufacturers and distributors of exempt quantities of byproduct material. One comment was received from the Radiation Safety Officer (RSO) of a university. One comment was received from a member of the public who did not identify an affiliation. Officials from two Agreement States (Alabama and Texas) and staff from two others (Illinois and Georgia) also submitted comments. A discussion of the comments and the NRC's responses follow.

### *A. Meaning of the Term ''Byproduct Materia''*

*Comment:* One commenter noted that the Energy Policy Act of 2005 changed the definition of ''byproduct material'' in the AEA. It was suggested that the NRC explain how ''byproduct material'' is defined in this rule.

*Response:* The definition of byproduct material that applies to this rule is in 10 CFR 30.4, which currently reads: ''Byproduct material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.'' As noted in the comment, the Energy Policy Act of 2005 (EPAct) expanded and revised the definition of byproduct material under the NRC's jurisdiction by incorporating certain naturally occurring and accelerator-produced radioactive material. The EPAct required that the NRC promulgate revisions to its regulations to incorporate the new byproduct material. The NRC published its proposed rule on July 28, 2006 (71 FR 42952) in response to this requirement, to revise its regulations and revise the definition of byproduct material in certain of its regulations, including 10 CFR 30.4. The final rule was published October 1, 2007 (72 FR 55863). When the revised definition becomes effective November 30, 2007, the new definition will apply. Distributors of the newly defined byproduct material will be regulated by the NRC, and therefore required to follow the regulations as amended by this final rule. However, as these distributors are already licensed by the NRC for distribution of other radioactive materials, the impact of this final rule on these distributors will be no greater than the impact on other NRC exempt distribution licensees.

### *B. Exempt Quantity Distribution Reports*

*Comment:* One commenter submitted a comment on the NRC's new reporting requirements in § 32.20(c) for distributors and manufacturers of materials distributed to persons exempt under § 30.18, ''Exempt quantities.'' The commenter noted that a requirement for a report that indicates the chemical and physical form of each exempt quantity could be excessively burdensome. The commenter suggested that the NRC should specify the names that may be used by licensees to describe commonly distributed materials.

*Response:* The final rule was changed as a result of this comment. The NRC has evaluated the impact of exempt quantities on the public health and safety and the environment to weigh the effectiveness and appropriateness of its regulatory program for this exemption. The NRC does this for all exempt products and materials. During the last evaluation of exempt distribution, it was believed that knowledge of both the chemical and physical form of material distributed as ''exempt quantities'' would provide information that could increase the NRC's ability to estimate the impacts of this exemption on public health and safety and the environment. The proposed rule language, therefore, required that distributors of exempt quantities of radioactive material must report, among other things, both the chemical and physical form of the radioactive material. However, the NRC agrees that providing chemical information would be excessively burdensome for licensees, and that the NRC can perform the necessary evaluations based on the information provided on physical form.

The Commission has changed the final rule language to address the commenter's concerns. The language in the final rule retains the annual reporting requirement for exempt quantity distribution and the requirement to report physical form. However, the NRC will not require reporting of the chemical form.

The NRC notes that while terms such as ''solid,'' ''liquid,'' or ''gas'' are appropriate to use for reporting the physical form of exempt quantities, other descriptive terms such as ''metal'' or ''powder'' are also acceptable. The NRC does not intend to restrict licensees to use of particular terms; doing so may impose additional burden in reporting. If a licensee has made a substantial number of distributions, and has documentation that more quickly and easily provides essentially the same information and allows the NRC to determine the physical form of the

distributed material, a licensee may choose to report using its own terminology instead (e.g., ''solution'' instead of ''liquid'' or ''sealed source'' instead of ''solid''). However, terms that are ambiguous (e.g., ''calibration standard,'' or ''radiolabeled research compounds'') do not specify the physical form and are not acceptable for reporting exempt quantity distribution.

Reports covering any time period before the effective date of this final rule are only required to contain data on the total quantity of each radionuclide distributed. Although a report of physical form would be useful for historical distributions, there is no requirement to report the physical form before the effective date of this rule. This was clarified in the final rule text.

*C. Transfer of Generally Licensed Devices*

*Comment:* Some commenters noted that the rule language as proposed in § 31.5(c)(8)(iii)(C) would have required that the licensee obtain maintenance information from the manufacturer to transfer the device to its specific license, which would be impossible if the manufacturer is no longer in business or otherwise unwilling to provide maintenance information.

*Response:* The final rule was changed in response to this comment. The intent in the proposed rule was that a specific licensee is responsible for maintenance activities, but the maintenance instructions may not have been provided to the licensee when the device was first purchased. Although the specific licensee must have sufficient expertise to conduct adequate maintenance activities, in some cases there are procedures developed by the manufacturer (and reviewed and approved by the NRC or Agreement State) that are unique to the device. There is no universal requirement for manufacturers to provide this information to general licensees, because general licensees are only allowed to perform maintenance activities in limited circumstances, and at the time of distribution it was not known that the device would eventually be used under the authority of a specific license. Therefore, it was proposed that a licensee must obtain maintenance information that would be applicable under the specific license. The language in the proposed rule could have been interpreted to limit licensees to obtaining this information directly from the device manufacturer (or initial transferor). This would be problematic if the manufacturer were no longer in business.

The final rule has been changed to clarify that the needed information on maintenance is that originated by the manufacturer (or initial distributor), and that it need not be obtained directly. The information may be obtained from not only the device manufacturer, but a service provider, a regulatory agency, or another knowledgeable licensee. The NRC believes that service providers, in particular, should have the maintenance information readily available, and there should be an established relationship between a service provider and the general licensee for the devices in question. The important goal is that the specific licensee is aware of any device-specific maintenance instructions important to safety.

*Comment:* Several commenters noted potential problems with the proposed labeling procedure in § 31.5(c)(8)(iii)(B) that would require a licensee to remove and replace the label before the transfer of a generally licensed device to the authority of a specific license. One commenter indicated that the proposed requirement may conflict with the requirement in § 31.5(c)(1) that prohibits a general licensee from removing the label, and it was suggested that a specifically licensed third party would be needed to complete the transaction. It was also noted that the NRC's labeling requirements could lead to the loss of additional safety warnings or leak testing instructions from generally licensed devices, or that the provenance of the device would be lost. Other commenters identified potential problems, such as damage to the device that could occur during the process of removing the old label. One commenter recommended that the NRC consider that when a generally licensed device is added to a specific license, the conditions of the specific license supersede the general license requirements. For instance, a specific license condition specifying leak tests would supersede the general license label limitations.

*Response:* The final rule was changed in response to this comment. The proposed rule addressed the labeling procedure that would accompany the transfer of a generally licensed device to the authority of a specific license to address the case where an old label was unnecessarily restrictive on the end user, or where the old label would not comply with the requirements of § 20.1904, or any circumstance where the old label would conflict with the device's new status and the licensee's new responsibilities, such as if the original label of the device continued to indicate that it was a generally licensed device. In addition, as noted by one commenter, some labels on generally licensed devices contain stipulations that restrict actions by the end user, such as indications that the licensee shall not conduct its own leak tests. This prohibition would be in force as long as the device is held under a general license; however, once the device is transferred to the authority of a specific license, this restriction would be inappropriate.

The intent of the labeling change in the proposed rule was not to remove safety information, but to remove inappropriate restrictions that may be on some labels and to reflect the change in status from generally licensed to specifically licensed. As noted in one comment, the conditions of the specific license supercede the requirements of the general license once the device is transferred to the authority of the specific license. To address this and other potential conflicts, the NRC proposed that the licensee remove the existing label and replace it with another.

The final rule has been changed to allow licensees several acceptable options—including those suggested by commenters—for the labeling procedure that will accompany the transfer of a generally licensed device to the authority of a specific license. As originally stated in the proposed rule, the old label may be removed entirely. However, the final rule provides an additional option that the old label may be covered or altered in whole or in part. Alternatively, the specific licensee may leave the old label on the device and conspicuously affix a new label, so long as the resulting arrangement makes it clear (to an inspector, for example) that the old label is superceded. If a licensee believes that the process of removing the old label would affect the integrity of a device's shielding or would otherwise damage the device, the licensee must use another method to comply with the labeling requirement, such as covering the old label.

The final rule has also been changed to specifically identify the information that must be on a device that is transferred from generally licensed to specifically licensed status. The final rule has been clarified to require that the device's manufacturer, model number, and serial number be retained. In any case, the new label must comply with the requirements for all containers of specifically licensed radioactive material (in this case, a device) in § 20.1904, and also include the device's manufacturer, model number, and serial number. The requirement that the device be labeled in accordance with § 20.1904 is not a new requirement, as

that section applies to all devices held under the authority of a specific license; however, the requirement has been clarified in the final rule. The device's manufacturer, model number, and serial number is information that is not required by § 20.1904; however, the final rule clarifies that this information must be retained for tracking purposes and so that the provenance, or origin, of the device is not lost.

Concerning the comment that an existing regulation (§ 31.5(c)(1)) prohibits a general licensee from removing a label, the regulation would no longer apply once the device is transferred to the authority of a specific license. It is also not necessary for a specifically licensed third party (such as a vendor) to change the label to accompany the change in status; a specific licensee who possesses the device is authorized to change the label.

*Comment:* A commenter objected to removing the requirement in § 31.5(c)(iii) for prior approval for this category of transfer, as prior approval would ensure appropriate tracking and licensing of the device.

*Response:* The NRC disagrees with this comment and the final rule is not changed. As part of transferring the device to the specific license, the licensee must still report the transfer under the existing requirement in § 31.5(c)(8)(ii). The NRC believes this report is sufficient to allow for appropriate tracking and licensing and that prior approval of the transfer is unnecessary.

*Comment:* Some commenters suggested additional regulatory provisions with regard to the transfer of a generally licensed device to the authority of a specific license. One commenter suggested that, along with the proposed simplified mechanism for transferring a generally licensed device to a specific license (GL to SL transfer), there should also be a mechanism for transferring a device from a specific licensee back to generally licensed status (SL to GL transfer). A separate suggestion was made that a requirement be added to § 31.5(c)(8)(iii)(C) requiring the general licensee to initiate a program to leak test the device at a frequency specified under conditions of the specific license. A third suggestion was made that the NRC ''consider'' that when a generally licensed device is added to a specific license, the conditions of the specific license, such as the leak test condition, would supercede the conditions in the general license.

*Response:* No change has been made to the final rule as a result of these comments. This final rule only affects the transfer of generally licensed devices to specifically licensed status, and does not address the transfer of a device from a specific license back to its original status as generally licensed. The general license in § 31.5 only applies to devices received from a § 32.51 specific licensee (or Agreement State equivalent) to ensure that the device may be used by persons with no radiological training, and for tracking purposes.

With regard to the suggestion to add a provision to § 31.5(c) to require the general licensee to leak test the device at a frequency specified under conditions of a specific license, once the device is transferred to the authority of a specific license, the regulations in Part 31 do not apply, because the device is no longer generally licensed. Therefore, any rule change to this part will be ineffective in governing licensee actions after the device is transferred. No rule change is necessary, moreover, because the commenter's concerns that the device continue to be leak tested in accordance with the terms of the specific license will be addressed on the specific license following the transfer. The NRC recognizes that the conditions of the specific license supersede the requirements of the general license once the device is transferred to the authority of the specific license. The rule language does not need to be changed to ensure that conditions of the specific license supersede the conditions in the general license.

*Comment:* One commenter stated that the proposed revision to § 31.5(c)(8)(iii) ''is requiring additional regulation not required of general licensees who do not possess a specific license.'' The commenter indicated that an alternative approach might be ''to separately list GL products in a distinct license condition on specific licenses.'' The commenter warned that the proposed rule would ignore the ''safety properties of GL products and abandon their inherent safety features and relegate them to the same requirements imposed on specifically licensed products.''

*Response:* No changes to the final rule are being made as a result of these comments. This regulation provides licensees who hold both a generally licensed device and a specific license the option to more easily transfer a generally licensed device to the authority of a specific license. This transfer is not mandatory for all specific licensees who possess a generally licensed device. No additional regulation is being imposed on general licensees who do not possess a specific license, and no additional regulation is being imposed on general licensees who do possess a specific license, unless the licensee chooses to transfer its generally licensed devices to the authority of its specific license.

This final rule does not require specific licensees to list generally licensed devices on their specific licenses. Requiring this would negate a characteristic feature of the general license, which is valid without the issuance of a licensing document to a particular person. The commenter's approach—listing generally licensed devices held by a specific license as a license condition on a specific license—may lead to ambiguities with respect to the responsibilities of the licensee with regard to recordkeeping (such as device tracking). For example, generally licensed devices under § 31.5 are tracked by the NRC, but cease to be tracked once the device is transferred to the authority of a specific license. A misinterpretation of the regulatory status of the device may result in errors in the tracking systems. Additionally, when the generally licensed device is disposed of or otherwise transferred to a specific licensee, there would be extra costs associated in amending the license. Therefore, the NRC does not believe that generally licensed devices should be required to be listed on specific licensing documents.

*Comment:* One commenter stated that ''the transfer of the GL device to an end-user, in this case a specific licensee, would need to be reported, but not because it is being transferred as a specifically licensed device; it is not, it is still a GL device.''

*Response:* The NRC agrees that the transfer should be reported, under § 31.5(c)(8)(iii)(D). However, the NRC disagrees with the commenter's statement that the transferred device remains under a general license. Although a device that may be used under a general license may also be used under a specific license if the specific license authorizes the byproduct material, there should be a distinction as to which license is providing the authority for the possession and use of each device. This distinction determines which requirements apply to the licensee, such as reporting and maintenance.

*D. New Product-Specific Exemption for Smoke Detectors*

*Comment:* Two commenters were concerned about the potential impact of a literal interpretation of the language in the proposed rule exempting smoke detectors. The proposed new product-specific exemption in § 30.15(a)(7) was limited to smoke detectors containing no more than 1 μCi of americium-241. Both commenters noted that, due to

small variations caused by the manufacturing process, it is impractical (if not impossible) to produce smoke detectors that always contain no more than 1 μCi of americium-241. It was noted that this small variation is acceptable in current licensing practices and does not present any health, safety, or security risk. These commenters suggested that a statement should be added to the final rule allowing for nominal variation in the activity level of the source incorporated into the smoke detector.

*Response:* No change to the final rule is being made as a result of these comments. The product-specific exemption for smoke detectors is intended to apply to detectors that contain sources in which the expected activity is 1 μCi of americium-241 or less. This expected quantity is also the activity that is put on the label. The NRC believes that variation is to be expected as a result of the manufacturing process, and that a degree of variation is acceptable. Considerations for ensuring the quality of products and the adequacy of measurement in various circumstances are separate from the stated activity, or quantity, limit for an exemption. The interpretation of the quantity limit of 1 μCi is only that the expected, labeled quantity or activity may not exceed this limit. This is consistent with the historical interpretation of existing quantity limits in other exemptions. It should be noted that this is different from the stated ''maximum activity'' on the SS&D registration certificate. For a product-specific exemption, a SS&D certificate is not needed, and other information besides the dose assessment are available to ensure that the device may be safely used under an exemption from licensing.

*Comment:* One commenter urged revision of the appropriate guidance document (NUREG–1556, Vol. 3, Rev. 1) as soon as possible to reflect changes to methods for approving sources and devices.

*Response:* NUREG–1556, Vol. 3, Rev. 1 addresses the procedures for SS&Ds, and will not be updated as a result of this rule because the SS&D procedures are not being amended. However, NUREG–1556, Vol. 8 provides program-specific guidance about exempt distribution products. Interim staff guidance to supplement NUREG–1556, Vol. 8 is to be provided to reflect the revisions made by this final rule. The changes to the guidance needed as a result of this rulemaking are relatively minor and will be provided in the interim staff guidance to eliminate inconsistencies with the revised regulations.

*E. NRC—Agreement State Jurisdictional Issues*

*Comment:* One commenter stated that it would be helpful to clarify why the regulations for exempt quantities refer to equivalent Agreement State regulations.

*Response:* No change to the final rule is needed as a result of this comment. The final rule refers to Agreement State regulations because different agencies may have jurisdiction before, during, and after the distribution of exempt quantities of byproduct material. For example, prior to distribution, the possession of byproduct material requires a license, either by the NRC or an Agreement State depending on which regulatory body has jurisdiction. The commercial distribution of exempt quantities of byproduct material must be in accordance with a license issued by the NRC under § 32.18, since the NRC has the sole authority for authorizing commercial transfers. After the transfer, the recipient of the byproduct material is exempt from regulatory requirements either from those of the NRC or an Agreement State, depending on the location of the recipient.

*Comment:* One commenter raised objections to the NRC being the only licensing authority for exempt concentrations in § 30.14 and objected to reclassification of §§ 32.11 and 32.12 as Compatibility Category NRC. The commenter reasoned that organizations of State regulators, such as the Organization of Agreement States and the Conference of Radiation Control Program Directors could be used to facilitate data exchanges on exempt concentration distribution nationwide, and that the change to NRC-only licensing would not be justified on the basis of common defense and security.

*Response:* The NRC disagrees with this comment and the final rule retains the proposed language and compatibility category. All distribution of byproduct material to exempt persons is presently solely licensed by the NRC, with the only exception being provided in § 30.14, ''Exempt concentrations.'' (Previously, § 30.16, which is now being removed, had also provided for Agreement State licensing.) This discrepancy in the Commission's regulations was identified as a result of the NRC's systematic evaluation of exemptions performed in the 1990's, and has been discussed with the Agreement States since that time. The distribution of radioactive materials to the public for uncontrolled use—which includes exempt concentrations—and the release of these materials into the environment involve questions of national policy that are best addressed by the Commission. The NRC has determined that this discrepancy is not warranted.

The regulations controlling the introduction of radioactive material into products subsequently distributed under the exempt concentration exemption (§ 30.14) is the NRC's oldest exemption for byproduct material. It predates the Agreement State program. As the commenter notes, organizations of State regulators exist now, and could be used to facilitate the exchange of data on exempt concentrations. However, as explained below, the lack of a data exchange is not the only factor that the NRC considered in determining that exempt concentration distribution should be changed to NRC-only licensing.

There is no administrative benefit in providing authority to States to license exempt concentrations of byproduct material, and in fact, such licensing would likely be very costly to maintain. No Agreement State has identified any licensees authorized to introduce byproduct material into materials or products that are exempt from licensing under this regulation. The only businesses nationwide that are involved in this practice are already NRC licensees. Continuing with the current multi-jurisdictional structure would require States to train qualified license reviewers, update and maintain regulations, produce guidance documents, and develop a data exchange process among the States and with the NRC, which would involve an unnecessary use of resources, considering that there are no licensees in State jurisdictions. NRC-only licensing avoids these complications and costs, and a transition to NRC-only licensing at this time will have no regulatory impact on any business. It is administratively more efficient for there to be one licensing authority (NRC) rather than for each jurisdiction to maintain a licensing capability that is little used and unlike any other programmatic function.

Among other reasons, the Commission has retained regulatory authority for exempt distribution (consumer products) to remove any possibility that population exposure from these products would be inconsistent with Commission policies. The Commission has long retained the position that the distribution of radioactive materials to the general public for uncontrolled use and the eventual disposition of these materials involve questions of national policy that

are best addressed by the NRC (March 16, 1965; 30 FR 3462). The NRC's retaining sole licensing authority over the distribution of exempt byproduct material does not have to be justified under common defense and security.

*F. Disposal of Exempt and Generally Licensed Devices*

*Comment:* One commenter stated that disposal costs should be factored into the original cost of the exempt devices, and that a mechanism should be established to return exempt devices to a vendor for recycling or disposal. This commenter also stated that disposal costs should be factored into the original costs of generally licensed devices.

*Response:* The issue of disposal costs is outside the scope of this rulemaking.

**IV. Amendments by Section**

10 CFR 30.14(c)—Revises the exemption for manufacturers, processors, and producers to require that the licensed entity must be an NRC licensee, and clarifies that the exemption applies in all jurisdictions.

10 CFR 30.14(d)—Revises the prohibition on introducing exempt concentrations to apply to all persons except those authorized by an NRC license.

10 CFR 30.15(a)—Removes obsolete exemptions (automobile lock illuminators, automobile shift indicators, thermostat dials and pointers, and spark gap irradiators). Limits certain exemptions (balances of precision and marine compasses and other navigational instruments) to previously distributed products. Creates a new exemption for smoke detectors containing no more than 1 μCi of americium-241 in a foil.

10 CFR 30.16—Removes the exemption for resins containing scandium-46 for sand consolidation in oil wells.

10 CFR 30.18—Revises the exempt quantities provision by adding an explicit prohibition against combining sources to create an increased radiation level.

10 CFR 31.5(c)(8)(ii)—Resolves an ambiguity with respect to addressing reports submitted to the NRC. Changed to reflect a reorganization within the NRC.

10 CFR 31.5(c)(8)(iii)—Revises transfer provisions to explicitly state actions necessary for transfer of devices from generally licensed status to specifically licensed status. Removes the need for written NRC approval before transfer in that case.

10 CFR 32.8—Removes § 32.17 from the list of information collection requirements.

10 CFR 32.11(a)—Exempts Agreement State licensees from the requirements of § 30.33(a)(2) and (3).

10 CFR 32.12—Revises the reporting period for material transfers to annual. Revises the content of the reports and removes the requirement to send copies to the Regional offices. Changed to reflect a reorganization within the NRC.

10 CFR 32.13—Prohibits the introduction of exempt concentrations by all persons except for those authorized by an NRC license.

10 CFR 32.14(d)—Removes reference to deleted § 32.40.

10 CFR 32.15(d)—Adds labeling requirements for smoke detectors distributed for use under the new product-specific exemption in § 30.15.

10 CFR 32.16—Revises the reporting period for material transfers to annual. Makes minor changes to the content of the reports and removes the requirement to send copies to the Regional offices. Removes reference to deleted § 32.17. Changed to reflect a reorganization within the NRC.

10 CFR 32.17—Removes obsolete distributor requirements for resins containing scandium-46 for sand consolidation in oil wells.

10 CFR 32.20—Revises the reporting period for material transfers to annual. Makes minor changes to the content of the reports and removes the requirement to send copies to the Regional offices. Changed to reflect a reorganization within the NRC.

10 CFR 32.25(c)—Revises the reporting period for material transfers to annual. Makes minor changes to the content of the reports and removes the requirement to send copies to the Regional offices. Changed to reflect a reorganization within the NRC.

10 CFR 32.29(c)—Revises the reporting period for material transfers to annual. Makes minor changes to the content of the reports and removes the requirement to send copies to the Regional offices. Changed to reflect a reorganization within the NRC.

10 CFR 32.40—Removes the prototype test requirements for automobile lock illuminators.

10 CFR 150.20(b)—Removes the provision for transfers to persons exempt under § 30.14 from the reciprocity provision for Agreement State licensees, and the reference to § 30.14(d).

**V. Criminal Penalties**

For the purpose of Section 223 of the Atomic Energy Act of 1954, as amended, the Commission is issuing the final rule to amend 10 CFR Parts 30, 31, 32, and 150 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

**VI. Agreement State Compatibility**

In accordance with the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into Compatibility Categories A, B, C, D, or NRC, or Adequacy Category H&S. This rule does not amend any regulation classified as compatibility category A or adequacy category H&S. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Categories A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and, thus, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the AEA or provisions of 10 CFR. These program elements should not be adopted by the Agreement States.

Despite being amended in terms of substance, the compatibility category will not change for many regulations as a result of this final rule. Sections 32.14, 32.15, 32.16, 32.20, 32.25, 32.29, and 32.40 will continue to be classified as Category NRC. Amendments made by this rule to regulations in Parts 30 and 31, as well as § 32.17, will continue to be classified as Category B. Sections 32.13 and 150.20 will continue to be classified as Category C. Section 32.8 will continue to be classified as Category D. Consistent with what was proposed, § 32.11 is changed from Categories C/B to Category NRC and § 32.12 is changed from Category C to Category NRC.

## VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

## VIII. Environmental Assessment and Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The Commission has prepared an environmental assessment for this final rule and has made a finding of no significant impact as a result of this final rule.

Many of the individual amendments in this rule belong to a category of actions which the Commission, by §§ 51.22(c)(1) and 51.22(c)(3)(ii) and (iii), has declared to be a categorical exclusion. The amendments to §§ 30.14, 32.11, and 32.13 related to NRC licensing of the introduction of exempt concentrations do not change any provision that regulates the physical nature of the products. The amendments to §§ 30.15, 30.16, 32.17, and 32.40 related to deleting obsolete provisions do not constitute a significant change to current practices. Similarly, the amendment to § 30.18 which prohibits combining exempt quantities does not change current practices. The new product specific exemption for smoke detectors in § 30.15(a)(7) does not change any provision that regulates the physical nature of the products and is not likely to affect any environmental resources.

The detailed environmental assessment supporting this final rule is available for public inspection at the NRC Public Document Room, O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies of the Environmental Assessment may be obtained from Andy Imboden, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, (301) 415–2327, *asi@nrc.gov*.

## IX. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This final rule makes minor revisions to the burden on existing and future licensees for reporting and recordkeeping under §§ 31.5, 32.12, 32.16, 32.20, 32.25(c), and 32.29(c). New licensees under § 32.14 will find their burden reduced as compared to the existing licensing under § 32.26. The public burden for this information collection is estimated to average 1 hour per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by OMB under numbers 3150–0001, 3150–0014, 3150–0016, and 3150–0120.

*Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## X. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Andy Imboden, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2327, *asi@nrc.gov*.

## XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The majority of companies that are affected by this rule do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC in 10 CFR 2.810.

## XII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter 1. Therefore, a backfit analysis is not required.

## XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

**Lists of Subjects**

*10 CFR Part 30*

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 31*

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

*10 CFR Part 32*

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 150*

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 30, 31, 32, and 150.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1 . The authority citation for part 30 continues to read as follows:

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2 . In § 30.14, paragraphs (c) and (d) are revised to read as follows:

**§ 30.14 Exempt concentrations.**

* * * * *

(c) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in this part and parts 31 through 36 and 39 of this chapter to the extent that this person transfers byproduct material contained in a product or material in concentrations not in excess of those specified in § 30.70 and introduced into the product or material by a licensee holding a specific license issued by the Commission expressly authorizing such introduction. This exemption does not apply to the transfer of byproduct material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(d) No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under this section or equivalent regulations of an Agreement State, except in accordance with a license issued under § 32.11 of this chapter.

■ 3. In § 30.15, paragraphs (a)(2), (a)(4), (a)(6), and (a)(10) are removed and reserved, paragraphs (a)(3) and (a)(5) are revised, and paragraph (a)(7) is added to read as follows:

**§ 30.15 Certain items containing byproduct material.**

(a) * * *

(2) [Reserved]

(3) Balances of precision containing not more than 1 millicurie of tritium per balance or not more than 0.5 millicurie of tritium per balance part manufactured before December 17, 2007.

(4) [Reserved]

(5) Marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas manufactured before December 17, 2007.

(6) [Reserved]

(7) Ionization chamber smoke detectors containing not more than 1 microcurie (μCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

* * * * *

(10) [Reserved]

* * * * *

**§ 30.16 [Removed]**

■ 4. Section 30.16 is removed.

■ 5. In § 30.18, paragraph (a) is revised and paragraph (e) is added to read as follows:

**§ 30.18 Exempt quantities.**

(a) Except as provided in paragraphs (c) through (e) of this section, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in parts 30 through 34, 36, and 39 of this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in individual quantities, each of which does not exceed the applicable quantity set forth in § 30.71, Schedule B.

* * * * *

(e) No person may, for purposes of producing an increased radiation level, combine quantities of byproduct material covered by this exemption so that the aggregate quantity exceeds the limits set forth in § 30.71, Schedule B, except for byproduct material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the regulations in this part.

## PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

■ 6 . The authority citation for part 31 continues to read as follows:

**Authority:** Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 7. In § 31.5, paragraph (c)(8)(ii) introductory text and paragraph (c)(8)(iii) are revised to read as follows:

**§ 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.[5]**

* * * * *

(c) * * *

(8) * * *

(ii) Shall, within 30 days after the transfer of a device to a specific licensee or export, furnish a report to the Director of the Office of Federal and State Materials and Environmental Management Programs by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/GLTS. The report must contain—

* * * * *

(iii) Shall obtain written NRC approval before transferring the device to any other specific licensee not specifically identified in paragraph (c)(8)(I) of this section; however, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if, the holder:

(A) Verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(B) Removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by paragraph (c)(1) of this section) so that the device is labeled in compliance with § 20.1904 of this chapter; however the manufacturer, model number, and serial number must be retained;

(C) Obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(D) Reports the transfer under paragraph (c)(8)(ii) of this section.

* * * * *

## PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 8. The authority citation for part 32 continues to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 9. In § 32.8, paragraph (b) is revised to read as follows:

**§ 32.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.18, 32.19, 32.20, 32.21, 32.21a, 32.22, 32.23, 32.25, 32.26, 32.27, 32.29, 32.51, 32.51a, 32.52, 32.53,

[5] Persons possessing byproduct material in devices under a general license in § 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of § 31.5 in effect on January 14, 1975.

32.54, 32.55, 32.56, 32.57, 32.58, 32.61, 32.62, 32.71, 32.72, 32.74, and 32.210.

* * * * *

■ 10. In § 32.11, paragraph (a) is revised to read as follows:

**§ 32.11 Introduction of byproduct material in exempt concentrations into products or materials, and transfer of ownership or possession: Requirements for license.**

* * * * *

(a) Satisfies the general requirements specified in § 30.33 of this chapter; *provided, however,* that the requirements of § 30.33(a)(2) and (3) do not apply to an application for a license to introduce byproduct material into a product or material owned by or in the possession of the licensee or another and the transfer of ownership or possession of the product or material containing the byproduct material, if the possession and use of the byproduct material to be introduced is authorized by a license issued by an Agreement State;

* * * * *

■ 11. Section 32.12 is revised to read as follows:

**§ 32.12 Same: Records and material transfer reports.**

(a) Each person licensed under § 32.11 shall maintain records of transfer of byproduct material and file a report with the Director of the Office of Federal and State Materials and Environmental Management Programs by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the byproduct material is transferred for use under § 30.14 of this chapter or equivalent regulations of an Agreement State.

(b) The report must identify the:

(1) Type and quantity of each product or material into which byproduct material has been introduced during the reporting period;

(2) Name and address of the person who owned or possessed the product or material, into which byproduct material has been introduced, at the time of introduction;

(3) The type and quantity of radionuclide introduced into each product or material; and

(4) The initial concentrations of the radionuclide in the product or material at time of transfer of the byproduct material by the licensee.

(c)(1) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after December 17, 2007, the licensee shall separately include data for transfers in prior years not previously reported to the Commission or to an Agreement State.

(2) Licensees who permanently discontinue activities authorized by the license issued under § 32.11 shall file a report for the current calendar year within 30 days after ceasing distribution.

(d) If no transfers of byproduct material have been made under § 32.11 during the reporting period, the report must so indicate.

(e) The licensee shall maintain the record of a transfer for one year after the transfer is included in a report to the Commission.

■ 12. Section 32.13 is revised to read as follows:

**§ 32.13 Same: Prohibition of introduction.**

No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under § 30.14 of this chapter or equivalent regulations of an Agreement State, except in accordance with a license issued under § 32.11.

■ 13. In § 32.14, paragraph (d) is revised to read as follows:

**§ 32.14 Certain items containing byproduct material; Requirements for license to apply or initially transfer.**

* * * * *

(d) The Commission determines that the byproduct material is properly contained in the product under the most severe conditions that are likely to be encountered in normal use and handling.

■ 14. In § 32.15, paragraph (d) is revised to read as follows:

**§ 32.15 Same: Quality assurance, prohibition of transfer, and labeling.**

* * * * *

(d)(1) Label or mark each unit, except timepieces or hands or dials containing tritium or promethium-147, and its container so that the manufacturer or initial transferor of the product and the byproduct material in the product can be identified.

(2) For ionization chamber smoke detectors, label or mark each detector and its point-of-sale package so that:

(i) Each detector has a durable, legible, readily visible label or marking on the external surface of the detector containing:

(A) The following statement: ''CONTAINS RADIOACTIVE MATERIAL'';

(B) The name of the radionuclide (''americium-241'' or ''Am-241'') and the quantity of activity; and

(C) An identification of the person licensed under § 32.14 to transfer the detector for use under § 30.15(a)(7) of this chapter or equivalent regulations of an Agreement State.

(ii) The labeling or marking specified in paragraph (d)(2)(I) of this section is located where it will be readily visible when the detector is removed from its mounting.

(iii) The external surface of the point-of-sale package has a legible, readily visible label or marking containing:

(A) The name of the radionuclide and quantity of activity;

(B) An identification of the person licensed under § 32.14 to transfer the detector for use under § 30.15(a)(7) or equivalent regulations of an Agreement State; and

(C) The following or a substantially similar statement: ''THIS DETECTOR CONTAINS RADIOACTIVE MATERIAL. THE PURCHASER IS EXEMPT FROM ANY REGULATORY REQUIREMENTS.''

(iv) Each detector and point-of-sale package is provided with such other information as may be required by the Commission.

■ 15. Section 32.16 is revised to read as follows:

**§ 32.16 Certain items containing byproduct material: Records and reports of transfer.**

(a) Each person licensed under § 32.14 shall maintain records of all transfers of byproduct material and file a report with the Director of the Office of Federal and State Material and Environmental Management Programs by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the products are transferred for use under § 30.15 of this chapter, giving the specific paragraph designation, or equivalent regulations of an Agreement State.

(b) The report must include the following information on products transferred to other persons for use under § 30.15 or equivalent regulations of an Agreement State:

(1) A description or identification of the type of each product and the model number(s), if applicable;

(2) For each radionuclide in each type of product and each model number, if

applicable, the total quantity of the radionuclide; and

(3) The number of units of each type of product transferred during the reporting period by model number, if applicable.

(c)(1) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after December 17, 2007, the licensee shall separately include data for transfers in prior years not previously reported to the Commission.

(2) Licensees who permanently discontinue activities authorized by the license issued under § 32.14 shall file a report for the current calendar year within 30 days after ceasing distribution.

(d) If no transfers of byproduct material have been made under § 32.14 during the reporting period, the report must so indicate.

(e) The licensee shall maintain the record of a transfer for one year after the transfer is included in a report to the Commission.

**§ 32.17 [Removed]**

■ 16. Section 32.17 is removed.

■ 17. Section 32.20 is revised to read as follows:

**§ 32.20 Same: Records and material transfer reports.**

(a) Each person licensed under § 32.18 shall maintain records of transfer of material identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.18 of this chapter or the equivalent regulations of an Agreement State and stating the kinds, quantities, and physical form of byproduct material transferred.

(b) The licensee shall file a summary report with the Director of the Office of Federal and State Materials and Environmental Management Programs by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the materials are transferred for use under § 30.18 or equivalent regulations of an Agreement State.

(c) For each radionuclide in each physical form, the report shall indicate the total quantity of each radionuclide and the physical form, transferred under the specific license.

(d)(1) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after December 17, 2007, the licensee shall separately include the total quantity of each radionuclide transferred for transfers in prior years not previously reported to the Commission.

(2) Licensees who permanently discontinue activities authorized by the license issued under § 32.18 shall file a report for the current calendar year within 30 days after ceasing distribution.

(e) If no transfers of byproduct material have been made under § 32.18 during the reporting period, the report must so indicate.

(f) The licensee shall maintain the record of a transfer for one year after the transfer is included in a summary report to the Commission.

■ 18. In § 32.25, paragraph (c) is revised to read as follows:

**§ 32.25 Conditions of licenses issued under § 32.22: Quality control, labeling, and reports of transfer.**

* * * * *

(c) Maintain records of all transfers and file a report with the Director of the Office of Federal and State Materials and Environmental Management Programs by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the products are transferred for use under § 30.19 of this chapter or equivalent regulations of an Agreement State.

(3) The report must include the following information on products transferred to other persons for use under § 30.19 or equivalent regulations of an Agreement State:

(i) A description or identification of the type of each product and the model number(s);

(ii) For each radionuclide in each type of product and each model number, the total quantity of the radionuclide;

(iii) The number of units of each type of product transferred during the reporting period by model number.

(4)(i) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after December 17, 2007, the licensee shall separately include data for transfers in prior years not previously reported to the Commission.

(ii) Licensees who permanently discontinue activities authorized by the license issued under § 32.22 shall file a report for the current calendar year within 30 days after ceasing distribution.

(5) If no transfers of byproduct material have been made under § 32.22 during the reporting period, the report must so indicate.

(6) The licensee shall maintain the record of a transfer for one year after the transfer is included in a report to the Commission.

■ 19. In § 32.29, paragraph (c) is revised to read as follows:

**§ 32.29 Conditions of licenses issued under § 32.26: Quality control, labeling, and reports of transfer.**

* * * * *

(c) Maintain records of all transfers and file a report with the Director of the Office of Federal and State Materials and Environmental Management Programs by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the products are transferred for use under § 30.20 of this chapter or equivalent regulations of an Agreement State.

(3) The report must include the following information on products transferred to other persons for use under § 30.20 or equivalent regulations of an Agreement State:

(i) A description or identification of the type of each product and the model number(s);

(ii) For each radionuclide in each type of product and each model number, the total quantity of the radionuclide;

(iii) The number of units of each type of product transferred during the reporting period by model number.

(4)(i) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after December 17, 2007, the licensee shall separately include data for transfers in prior years not previously reported to the Commission.

(ii) Licensees who permanently discontinue activities authorized by the license issued under § 32.26 shall file a report for the current calendar year within 30 days after ceasing distribution.

(5) If no transfers of byproduct material have been made under § 32.26 during the reporting period, the report must so indicate.

(6) The licensee shall maintain the record of a transfer for one year after the transfer is included in a report to the Commission.

**§ 32.40 [Removed]**

■ 20. Section 32.40 is removed.

## PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 21. The authority citation for part 150 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

■ 22. In § 150.20, paragraph (b) introductory text, and paragraph (b)(3) are revised to read as follows:

**§ 150.20 Recognition of Agreement State licenses.**

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7(a) through (f), 30.9, 30.10, 30.34, 30.41, and 30.51 through 30.63 of this chapter; §§ 40.7(a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61 through 40.63, 40.71, and 40.81 of this chapter; §§ 70.7(a) through (f), 70.9, 70.10, 70.32, 70.42, 70.52, 70.55, 70.56, 70.60 through 70.62 of this chapter; §§ 74.11, 74.15, and 74.19 of this chapter; and to the provisions of 10 CFR parts 19, 20 and 71 and subparts C through H of part 34, §§ 39.15 and 39.31 through 39.77 of this chapter. In addition, any person engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters under the general licenses provided in this section:

* * * * *

(3) Shall not, in any non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters, transfer or dispose of radioactive material possessed or used under the general licenses provided in this section, except by transfer to a person who is specifically licensed by the Commission to receive this material.

* * * * *

Dated at Rockville, Maryland, this 3rd day of October 2007.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E7–19944 Filed 10–15–07; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28922; Directorate Identifier 2007–NM–132–AD; Amendment 39–15225; AD 2007–21–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An incident occurred on one A300–600 aircraft at parking brake application. Both engines were running, the aircraft started moving again despite parking brake application. Captain tried to stop the aircraft via the pedals but, as the parking brake selector valve was selected, the aircraft could not be stopped (as per design, activation of the parking brake inhibits the other braking modes, and consequently prevents the recovery of the normal braking through the pedals). As part of the investigation, the pressure limiter was removed and examined. The expertise revealed a metallic wire aimed at reducing the section of one port of this equipment was found broken. A part of this wire partially obstructed the hole receiving this wire, thus delaying the build up of parking brake pressure.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective November 20, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 20, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 16, 2007 (72 FR 45976). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

An incident occurred on one A300–600 aircraft at parking brake application. Both engines were running, the aircraft started moving again despite parking brake application. Captain tried to stop the aircraft via the pedals but, as the parking brake selector valve was selected, the aircraft could not be stopped (as per design, activation of the parking brake inhibits the other braking modes, and consequently prevents the recovery of the normal braking through the pedals). As part of the investigation, the pressure limiter was removed and examined. The expertise revealed a metallic wire aimed at reducing the section of one port of this equipment was found broken. A part of this wire partially obstructed the hole receiving this wire, thus delaying the build up of parking brake pressure. In order to avoid recurrence of the failure mode described above, EASA issued Airworthiness Directive (AD) 2006–0178 to require the replacement of the parking brake pressure limiter (FIN 323292).

During embodiment of SB (Service Bulletin) 32–2133 on an A310 as per AD 2006–0178 (EASA AD 2006–0178 corresponds to FAA AD 2007–02–21, amendment 39–14908), an operator reported that the modified pressure limiter could not be fitted. Subsequent investigation concluded that A310 installation being slightly different from A300–600 aircraft, the approved solution was not directly adaptable to A310 aircraft.

* * * This new AD, dealing with the same subject, requires the replacement of the brake pressure limiter by accomplishment of Airbus SB A310–32–2133, which has been revised to include the adaptation kit for A310 aircraft.

You may obtain further information by examining the MCAI in the AD docket.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Conclusion**

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

**Costs of Compliance**

We estimate that this AD will affect 68 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Labor costs may be covered under warranty as described in the service information. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $32,640, or $480 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2007–21–07 Airbus:** Amendment 39–15225. Docket No. FAA–2007–28922; Directorate Identifier 2007–NM–132–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective November 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A310 series airplanes, certificated in any category, except airplanes on which Airbus Service Bulletin A310–32–2133, Revision 02, dated February 26, 2007, has been embodied in service.

**Subject**

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

An incident occurred on one A300–600 aircraft at parking brake application. Both engines were running, the aircraft started moving again despite parking brake application. Captain tried to stop the aircraft via the pedals but, as the parking brake selector valve was selected, the aircraft could not be stopped (as per design, activation of the parking brake inhibits the other braking modes, and consequently prevents the recovery of the normal braking through the pedals). As part of the investigation, the pressure limiter was removed and examined. The expertise revealed a metallic wire aimed at reducing the section of one port of this equipment was found broken. A part of this wire partially obstructed the hole receiving this wire, thus delaying the build up of parking brake pressure. In order to avoid recurrence of the failure mode described above, EASA (European Aviation Safety Agency), issued Airworthiness Directive (AD) 2006–0178 to require the replacement of the parking brake pressure limiter (FIN 323292).

During embodiment of SB (Service Bulletin) 32–2133 on an A310 as per AD 2006–0178 [EASA AD 2006–0178 corresponds to FAA AD 2007–02–21, amendment 39–14908], an operator reported that the modified pressure limiter could not be fitted. Subsequent investigation concluded that A310 installation being slightly different from A300–600 aircraft, the approved solution was not directly adaptable to A310 aircraft.

* * * This new AD, dealing with the same subject, requires the replacement of the brake

pressure limiter by accomplishment of Airbus SB A310–32–2133, which has been revised to include the adaptation kit for A310 aircraft.

**Actions and Compliance**

(f) Unless already done, do the following actions.

(1) Within 10 months after the effective date of this AD, replace the parking brake pressure limiter (FIN 323292), in accordance with the instructions given in Airbus Service Bulletin A310–32–2133, Revision 02, dated February 26, 2007.

(2) [Reserved]

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: No difference.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI EASA Airworthiness Directive 2007–0151, dated May 22, 2007; Airbus Service Bulletin A310–32–2133, Revision 02, dated February 26, 2007; and Messier-Bugatti Service Bulletin C24264–32–848, dated February 15, 2006, for related information.

**Material Incorporated by Reference**

(i) You must use Airbus Service Bulletin A310–32–2133, Revision 02, dated February 26, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 3, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20137 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28810; Directorate Identifier 2007–NM–104–AD; Amendment 39–15226; AD 2007–21–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Hawker Beechcraft Model Hawker 800XP Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Model Hawker 800XP airplanes. This AD requires doing an inspection of panel DA wiring for clearance and for signs of chafing or exposed conductors, and repairing or replacing the wires and cable ties if necessary. This AD results from reports of wire bundle interference in the DA panel, chafed wire bundles, and exposed conductors. We are issuing this AD to prevent chafing of wire bundles, which could cause an electrical short and consequent loss of several functions essential for safe flight and smoke or fire in the flight compartment and main cabin.

**DATES:** This AD becomes effective November 20, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 20, 2007.

**ADDRESSES:** For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Philip Petty, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Hawker Beechcraft Model Hawker 800XP airplanes. That NPRM was published in the **Federal Register** on July 30, 2007 (72 FR 41465). That NPRM proposed to require doing an inspection of panel DA wiring for clearance and for signs of chafing or exposed conductors, and repairing or replacing the wires and cable ties if necessary.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**Costs of Compliance**

There are about 438 airplanes of the affected design in the worldwide fleet. This AD affects about 292 airplanes of U.S. registry. The required inspection takes about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $46,720, or $160 per airplane.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–21–08 Hawker Beechcraft Corporation (formerly Raytheon Aircraft Company):** Amendment 39–15226. Docket No. FAA–2007–28810; Directorate Identifier 2007–NM–104–AD.

**Effective Date**

(a) This AD becomes effective November 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Hawker Beechcraft Model Hawker 800XP airplanes, certificated in any category; as identified in Raytheon Service Bulletin SB 24–3772, dated February 2006.

**Unsafe Condition**

(d) This AD results from reports of wire bundle interference in the DA panel, chafed wire bundles, and exposed conductors. We are issuing this AD to prevent chafing of wire bundles, which could cause an electrical short and consequent loss of several functions essential for safe flight and smoke or fire in the flight compartment and main cabin.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Inspection and Corrective Actions**

(f) Within 600 flight hours or 12 months after the effective date of this AD, whichever occurs first, do a detailed inspection of panel DA wiring for clearance and for signs of chafing or exposed conductors, in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3772, dated February 2006. If any wire is touching the panel, structure, or equipment, or if evidence of chafing or exposed conductors exists, before further flight, repair or replace the wires and cable ties with new ones, in accordance with the service bulletin.

**Note 1:** For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(g) Although Raytheon Service Bulletin SB 24–3772, dated February 2006, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(i) You must use Raytheon Service Bulletin SB 24–3772, dated February 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on October 3, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20138 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–21701; Directorate Identifier 2005–NM–086–AD; Amendment 39–15231; AD 2007–21–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747 and 767 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747 and 767 airplanes. This AD requires reworking the electrical bonding between the airplane structure and the pump housing of the outboard boost pumps in the main fuel tank of certain Boeing Model 747

airplanes, and between the airplane structure and the pump housing of the override/jettison pumps in the left and right wing center auxiliary fuel tanks of certain Boeing Model 767 airplanes. This AD also requires related investigative actions and corrective actions if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent insufficient electrical bonding, which could result in a potential of ignition sources inside the fuel tanks, and which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD becomes effective November 20, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 20, 2007.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Philip Sheridan, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747 and 767 airplanes. That supplemental NPRM was published in the **Federal Register** on March 30, 2007 (72 FR 15069). That supplemental NPRM proposed to require reworking the electrical bonding between the airplane structure and the pump housing of the outboard boost pumps in the main fuel tank of certain Boeing Model 747 airplanes, and between the airplane structure and the pump housing of the override/jettison pumps in the left and right wing center auxiliary fuel tanks of certain Boeing Model 767 airplanes. That supplemental NPRM also proposed to require related investigative actions and corrective actions if necessary. That supplemental NPRM proposed to revise the original NPRM to add an inspection requirement for certain Model 747 airplanes, and to specify cold-working the fastener holes for certain other Model 747 airplanes.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received to the supplemental NPRM.

**Requests To Refer to New Revisions of Service Information**

Boeing, All Nippon Airways, and Air Transport Association on behalf of its member United Airlines, all request that we refer to various new revisions of relevant service information as follows: Boeing Special Attention Service Bulletins 747–28–2259, Revision 2, dated July 5, 2007; 767–57–0092, Revision 1, dated February 15, 2007; and 767–57–0093, Revision 1, dated February 15, 2007. (We referred to earlier revisions of these service bulletins as the appropriate sources of service information for accomplishing the actions proposed in the supplemental NPRM.)

We agree with the commenters' requests. We have reviewed the new service information and revised Table 1 and paragraph (f) of the AD to refer to the new revisions of the service information. We have also revised paragraph (g) of the AD to give credit for prior accomplishment of earlier revisions by adding a new Table 2. The new revisions specify that no more work is necessary for airplanes on which the actions were accomplished in accordance with the earlier revisions. The new revisions of the service information, among other things, correct certain typographical errors, change references to certain documents, add information about certain edge margins, and revise the grouping of airplanes in the effectivity.

Operators should note that on September 25, 2007, Boeing issued Information Notice 747–28–2259 IN 01. The information notice alerts operators of a typographical error in step 9 of figures 1 through 6 of Boeing Special Attention Service Bulletin 747–28–2259, Revision 2, dated July 5, 2007. The information notice states that the note given in step 9 should read ''if the maximum resistance value of 0.0005 ohm can not be met, repeat steps 1 through 7'' and not ''steps 1 through 8.''

**Explanation of Additional Change Made to This AD**

We have simplified paragraph (f)(1) of this AD by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this AD for repair methods.

**Conclusion**

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Costs of Compliance**

There are about 3,401 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Rework electrical bonding for Boeing Model 747 airplanes | 10 | $80 | $800 | 1,115 | $892,000 |
| Rework electrical bonding for Boeing Model 767 airplanes | 9 | 80 | 720 | 921 | 663,120 |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–21–13 Boeing:** Amendment 39–15231. Docket No. FAA–2005–21701; Directorate Identifier 2005–NM–086–AD.

**Effective Date**

(a) This AD becomes effective November 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the Boeing airplane models identified in Table 1 of this AD, certificated in any category.

TABLE 1.—AIRPLANES AFFECTED BY THIS AD

| Model— | As identified in Boeing special attention service bulletin— |
|---|---|
| 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. | 747–28–2259, Revision 2, dated July 5, 2007. |
| 767–200, –300, and –300F series airplanes | 767–57–0092, Revision 1, dated February 15, 2007. |
| 767–400ER series airplanes | 767–57–0093, Revision 1, dated February 15, 2007. |

**Unsafe Condition**

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent insufficient electrical bonding, which could result in a potential of ignition sources inside the fuel tanks, and which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Rework Electrical Bonding**

(f) Within 60 months after the effective date of this AD: Do the actions specified in paragraph (f)(1) or (f)(2) of this AD, as applicable, by accomplishing all the actions specified in the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD. Do any related investigative and corrective actions before further flight.

(1) For Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes: Rework the electrical bonding between the airplane structure and the pump housing of the outboard boost pumps in the main fuel tank, and do related investigative and applicable corrective actions. If any crack, corrosion, or damage is found during the open-hole high-frequency eddy current (HFEC) inspection specified in Boeing Special Attention Service Bulletin 747–28–2259, Revision 2, dated July 5, 2007, and the special attention service bulletin specifies contacting Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

(2) For Boeing Model 767–200, –300, –300F, and –400ER series airplanes: Rework the electrical bonding between the airplane structure and the pump housing of the override/jettison pumps in the left and right wing center auxiliary fuel tanks, and do the related investigative and applicable corrective actions.

**Credit for Actions Accomplished Previously**

(g) Actions done before the effective date of this AD in accordance with the applicable special attention service bulletins listed in Table 2 of this AD are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

TABLE 2.—SERVICE BULLETINS ACCEPTABLE FOR ACTIONS ACCOMPLISHED PREVIOUSLY

| Boeing special attention service bulletin | Revision level | Date |
|---|---|---|
| 747–28–2259 | Original | November 4, 2004. |
| 747–28–2259 | 1 | October 5, 2006. |

TABLE 2.—SERVICE BULLETINS ACCEPTABLE FOR ACTIONS ACCOMPLISHED PREVIOUSLY—Continued

| Boeing special attention service bulletin | Revision level | Date |
|---|---|---|
| 767–57–0092 | Original | November 4, 2004. |
| 767–57–0093 | Original | November 4, 2004. |

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(i) You must use the applicable special attention service bulletin listed in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

| Boeing special attention service bulletin | Revision level | Date |
|---|---|---|
| 747–28–2259 | 2 | July 5, 2007. |
| 767–57–0092 | 1 | February 15, 2007. |
| 767–57–0093 | 1 | February 15, 2007. |

Issued in Renton, Washington, on October 5, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20223 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28811; Directorate Identifier 2006–NM–246–AD; Amendment 39–15233; AD 2007–21–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 707 Airplanes and Model 720 and 720B Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 707 airplanes and Model 720 and 720B series airplanes. This AD requires identifying the material used in the elevator hinge support fittings of the horizontal stabilizer trailing edge, doing repetitive detailed inspections for cracking of the fittings and corrective actions if necessary, and doing an eventual terminating action. This AD results from a report that stress corrosion cracking of the elevator hinge support fittings has been discovered on several Model 707 airplanes. We are issuing this AD to prevent cracking of the elevator hinge support fittings, which could reduce the elevator support stiffness and lead to in-flight airframe vibration, consequent damage to the elevator and horizontal stabilizer, and reduced controllability of the airplane.

**DATES:** This AD becomes effective November 20, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 20, 2007.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 707 airplanes and Model 720 and 720B series airplanes. That NPRM was published in the **Federal Register** on July 30, 2007 (72 FR 41462). That NPRM proposed to require identifying the material used in the elevator hinge support fittings of the horizontal stabilizer trailing edge, doing repetitive detailed inspections for cracking of the fittings and corrective actions if necessary, and doing an eventual terminating action.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Clarification of Costs of Compliance**

In the NPRM, the estimated cost per airplane for the proposed detailed inspections was correct, but the fleet cost was erroneously calculated to be $47,840 per inspection cycle. We have

corrected that amount to $99,840 per inspections cycle.

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Costs of Compliance**

There are about 185 airplanes of the affected design in the worldwide fleet. This AD affects about 52 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per Airplane | Fleet cost |
|---|---|---|---|---|
| Material verification | 1 | No parts needed | $80 | $4,160. |
| Detailed inspections | 24, per inspection cycle | No parts needed | $1,920 | $99,840, per inspection cycle. |
| Modification (fabrication and installation of nutplates). | 6 | Operator supplied | $480 | $24,960. |
| Terminating action | 132 | $53,078 [1] or $87,750 [2] | $63,638 [1] or $98,310 [2] | Up to $5,112,120. |

[1] for Group 1 airplanes.
[2] for Group 2 airplanes.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–21–15 Boeing:** Amendment 39–15233. Docket No. FAA–2007–28811; Directorate Identifier 2006–NM–246–AD.

**Effective Date**

(a) This AD becomes effective November 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

**Unsafe Condition**

(d) This AD results from a report that stress corrosion cracking of the elevator hinge support fittings of the horizontal stabilizer trailing edge has been discovered on several Model 707 airplanes. We are issuing this AD to prevent cracking of the elevator hinge support fittings, which could reduce the elevator support stiffness and lead to in-flight airframe vibration, consequent damage to the elevator and horizontal stabilizer, and reduced controllability of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Service Bulletin Reference**

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3518, dated October 9, 2006.

**Material Identification**

(g) Within 180 days after the effective date of this AD or before further flight after any horizontal stabilizer is replaced: Verify the type of material used in the elevator hinge support fittings of the horizontal stabilizer trailing edge, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin, then do the requirements of paragraph (g)(1) or (g)(2) of this AD, as applicable. Repeat the verification before further flight after the replacement of any hinge support fitting.

(1) For any hinge support fitting made of 7075–T7351 material: No further action is required by paragraph (h) or (i) of this AD.

(2) For any hinge support fitting made of 7079–T6 or 7075–T6 material: Do the actions required by paragraph (h) of this AD.

**Repetitive Inspections, One-time Modification, and Corrective Actions**

(h) Before further flight after doing paragraph (g) of this AD, do a detailed inspection for cracking of the hinge support fittings and modify certain segments of the rib webs, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. For any hinge support fitting found to be cracked or damaged, before further flight, do the actions required by paragraph (h)(1) or (h)(2) of this AD; in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Do all actions in accordance with the Accomplishment Instructions of the service bulletin; except where the service bulletin specifies to contact the manufacturer for repair procedures, this AD requires repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(1) Replace the fitting with a serviceable fitting made of 7079–T6 or 7075–T6 material. Repeat the detailed inspection thereafter at intervals not to exceed 180 days, until the terminating action required by paragraph (i) of this AD has been done.

(2) Replace the fitting with a new, improved fitting made of 7075–T7351 material.

**Terminating Action**

(i) For all airplanes: Within 48 months after the effective date of this AD, replace all hinge support fittings made of 7079–T6 or 7075–T6 material with new, improved fittings made of 7075–T7351 material, in accordance with Part 4 of the Accomplishment Instructions of the service bulletin. Doing this action terminates all requirements of paragraphs (g) and (h) of this AD.

**Parts Installation**

(j) As of the effective date of this AD, no person may install, on any airplane, a new or serviceable hinge support fitting made of 7079–T6 or 7075–T6 material, unless the requirements of paragraph (h)(1) of this AD are accomplished.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

**Material Incorporated by Reference**

(l) You must use Boeing 707 Alert Service Bulletin A3518, dated October 9, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 5, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20219 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–29217; Directorate Identifier 2007–CE–075–AD; Amendment 39–15229; AD 2007–21–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12, PC–12/45, and PC–12/47 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above that will supersede an existing AD. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This Airworthiness Directive (AD) is prompted by occurrences where abrasive damage (chafing) has been found on oil pipe assemblies in the area of the torque oil pressure transducer on the engines of some PC–12 aircraft. Incorrect assembly after maintenance tasks can decrease distances between various pipe/hoses assemblies and adjacent components. Damaged pipes can cause oil leakages in the area of the engine. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective November 5, 2007.

On November 5, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by November 15, 2007.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On October 17, 2000, we issued AD 2000–21–14, Amendment 39–11946 (65 FR 64340; October 27, 2000). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2000–21–14, there have been reports of occurrences of abrasive damage (chafing) on oil pipe assemblies in the area of the torque oil pressure transducer on the engines of some Model PC–12 series airplanes. The damage has caused engine oil leakage in some airplanes. If uncorrected, the unsafe condition could result in engine failure.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No: 2007–0235, dated August 31, 2007, corrected September 14, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) is prompted by occurrences where abrasive damage (chafing) has been found on oil pipe assemblies in the area of the torque oil pressure transducer on the engines of some PC–12 aircraft. Incorrect assembly after maintenance tasks can decrease distances between various pipe/hoses assemblies and adjacent components. Damaged pipes can cause oil leakages in the area of the engine.
>
> For the reasons stated above, this AD requires an inspection for damage, replacement when damage is found, and eventual replacement of all the affected pipe/hose assemblies.

You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Pilatus Aircraft Ltd. has issued Pilatus PC12 Service Bulletin No: 71–007, dated August 21, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of the AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

**FAA's Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if uncorrected, the unsafe condition could result in engine failure. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–29217; Directorate Identifier 2007–CE–075–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Amendment 39–11946 (65 FR 64340; October 27, 2000), and adding the following new AD:

**2007–21–11 Pilatus Aircraft Limited:** Amendment 39–15229; Docket No. FAA–2007–29217; Directorate Identifier 2007–CE–075–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective November 5, 2007.

**Affected ADs**

(b) This AD supersedes AD 2000–21–14, Amendment 39–11946.

**Applicability**

(c) This AD applies to Models PC–12, PC–12/45, and PC–12–47 airplanes, all serial numbers, that are:

(1) Equipped with oil pipe/hose assemblies part number (P/N) 577.11.12.104, 577.11.12.105, 946.37.74.305, 946.37.74.306, 946.37.74.307, 946.37.74.308, or 946.37.74.311; and

(2) certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 71: Power Plant-General.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

This Airworthiness Directive (AD) is prompted by occurrences where abrasive damage (chafing) has been found on oil pipe assemblies in the area of the torque oil pressure transducer on the engines of some PC–12 aircraft. Incorrect assembly after maintenance tasks can decrease distances between various pipe/hoses assemblies and adjacent components. Damaged pipes can cause oil leakages in the area of the engine.

For the reasons stated above, this AD requires an inspection for damage, replacement when damage is found, and eventual replacement of all the affected pipe/hose assemblies.

**Actions and Compliance**

(f) Unless already done, do the following actions:

(1)Within the next 10 hours time-in-service after November 5, 2007 (the effective date of this AD), do a configuration check and inspection of the pipe/hose assemblies for abrasive damage (chafing) and distortion following paragraph 3.B of Pilatus Aircraft Ltd. Pilatus PC12 Service Bulletin No: 71–007, dated August 21, 2007.

(2) If during the configuration check and inspection required by paragraph (f)(1) of this AD any abrasive damage (chafing) on oil pipe/hose assemblies is found, before further flight, replace the hose/pipe assemblies following paragraphs 3.B, 3.C, and 3.E of Pilatus Aircraft Ltd. Pilatus PC12 Service Bulletin No: 71–007, dated August 21, 2007.

(3) If during the configuration check and inspection required by paragraph (f)(1) of this AD no damage on oil pipe/hose assemblies is found, within 6 calendar months after November 5, 2007 (the effective date of this AD), replace the hose/pipe assemblies following paragraph 3.B, 3.C, and 3.E of Pilatus Aircraft Ltd. Pilatus PC12 Service Bulletin No: 71–007, dated August 21, 2007.

(4) After November 5, 2007, do not install any oil pipe/hose assembly with P/N 577.11.12.104, 577.11.12.105, 946.37.74.305, 946.37.74.306, 946.37.74.307, 946.37.74.308, or 946.37.74.311 on any Models PC–12, PC–12/45, or PC–12/47 airplanes.

(5) After November 5, 2007, do not install a spare engine on any Models PC–12, PC–12/45, or PC–12/47 airplanes, unless it has been verified that no oil pipe/hose assembly with P/N 577.11.12.104, 577.11.12.105, 946.37.74.305, 946.37.74.306, 946.37.74.307, 946.37.74.308, or 946.37.74.311 are installed on that engine.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: The MCAI allows for the temporary replacement (up to 6 months) of the hose/pipe assemblies with the same type that incorporate the potential unsafe condition (P/N 577.11.12.104, 577.11.12.105, 946.37.74.305, 946.37.74.306, 946.37.74.307, 946.37.74.308, or 946.37.74.311). Due to the urgency of this unsafe condition, the FAA is mandating replacement with the improved parts immediately if damage is found.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No: 2007–0235, dated August 31, 2007, corrected September 14, 2007; and Pilatus Aircraft Ltd. Pilatus PC12 Service Bulletin No: 71–007, dated August 21, 2007, for related information.

**Material Incorporated by Reference**

(i) You must use Pilatus Aircraft Ltd. Pilatus PC12 Service Bulletin No: 71–007, dated August 21, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Support Manager, CH–6371 STANS, Switzerland; telephone: + 41 41 619 6208; fax: + 41 41 619 7311; e-mail: *SupportPC12@pilatus-aircaft.com*; or Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099, fax: (303) 465–6040; E-mail: *Productsupport@PilBal.com*.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri on October 5, 2007.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20220 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–27925; Directorate Identifier 2006–NM–183–AD; Amendment 39–15232; AD 2007–21–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A310 series airplanes. This AD requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD becomes effective November 20, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 20, 2007.

**ADDRESSES:** For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the

Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A310 series airplanes. That NPRM was published in the **Federal Register** on April 20, 2007 (72 FR 19826). That NPRM proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

**Actions since NPRM Was Issued**

After we issued the NPRM, Airbus published the A310 Fuel Airworthiness Limitations, Document 95A.1930/05, Issue 2, dated May 11, 2007 (approved by the European Aviation Safety Agency (EASA) on July 6, 2007) (hereafter referred to as ''Document 95A.1930/05''). In the NPRM, we referred to Issue 1 of Document 95A.1930/05, dated December 19, 2005, as the appropriate source of service information for accomplishing the actions proposed in the NPRM. The fuel airworthiness limitations specified in Issue 2 of Document 95A.1930/05 are the same as those in Issue 1 of Document 95A.1930/05. Airbus has revised certain task titles in Section 1 of Issue 2 of Document 95A.1930/05 and has clarified the applicability and corrected certain airplane maintenance manual (AMM) references in Section 2 of the document. Therefore, we have revised this AD by referring to Issue 2 of Document 95A.1930/05 as the appropriate source of service information.

After we issued the NPRM, EASA issued airworthiness directive 2007–0096 R1, dated May 2, 2007, to correct certain compliance times; our NPRM included the correct compliance times, which we explained as differences between the NPRM and EASA airworthiness directive 2006–0202, dated July 11, 2006. The compliance times in this AD already correspond with the compliance times of EASA airworthiness directive 2007–0096 R1. Therefore, we have revised paragraph (k) of this AD to refer to EASA airworthiness directive 2007–0096 R1.

After we issued the NPRM, Airbus published Operator Information Telex (OIT) SE 999.0079/07, Revision 01, dated August 14, 2007, to identify the applicable sections of the Airbus A310 AMM necessary for accomplishing the tasks specified in Section 1 of Document 95A.1930/05. We have added a note to paragraph (f) of this AD to refer to that OIT.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

**Request To Revise ''Relevant Service Information'' Section**

Airbus requests that we revise the ''Relevant Service Information'' section to state that ''Section 1, 'Maintenance/Inspection Tasks,' of Document 95A.1930/05 describes certain FAL inspections, which are periodic inspections of certain features for latent failures that could contribute to a fire.'' In the NPRM, we specified that the latent failures could contribute to an ignition source. As justification, Airbus states that not all three tasks identified in Section 1 of Document 95A.1930/05 contribute to minimizing the risk of an ignition source: Only Task 3 minimizes the risk of an ignition source, while Tasks 1 and 2 minimize the occurrence of a combustible environment. We agree with Airbus's statements. However, we have not revised this AD in this regard since the ''Relevant Service Information'' section is not retained in a final rule.

**Request To Revise the Unsafe Condition**

Airbus states that it does not agree that there is an unsafe condition on Model A310 series airplanes, prior to accomplishing the maintenance/inspection tasks in Section 1 of Document 95A.1930/05. Airbus agrees that performing these tasks contributes to minimizing the risk of either an ignition source (Task 3) or the occurrence of a combustible environment (Tasks 1 and 2). In regard to the critical design configuration control limitations (CDCCLs), Airbus states that no unsafe condition exists at delivery, and that no unsafe condition will develop provided that operators observe the CDCCLs after delivery. Airbus further states that the CDCCLs are introduced to reduce the risk that an operator may inadvertently alter the design or installation, thus introducing a less safe configuration.

We infer Airbus would like us to revise the unsafe condition in this AD to incorporate its comments. We do not agree to revise the unsafe condition of this AD. Fuel airworthiness limitations (FALs) are items arising from a systems safety analysis that have been shown to have failure modes associated with an unsafe condition, as defined in FAA Memorandum 2003–112–15, ''SFAR 88—Mandatory Action Decision Criteria,'' dated February 25, 2003. These FALs are identified in failure conditions for which an unacceptable probability of ignition risk could exist if specific tasks or practices or both are not performed in accordance with a manufacturer's requirements. As Airbus notes, if an operator does not observe the CDCCLs after delivery, then an unsafe condition could occur. For this reason we must mandate Document 95A.1930/05 to ensure the CDCCLs are observed. We have not changed this AD in this regard.

**Request To Clarify the Requirements of Paragraph (h)**

Airbus requests that we revise paragraph (h) of the NPRM to state that operators are required to update their internal procedures and documentation to ensure appropriate management and control of the CDCCLs specified in Section 2 of Document 95A.1930/05. Airbus states that paragraph (h) of the NPRM is unclear about what an operator is expected to do with the CDCCLs. Airbus further states that paragraph (h) of the NPRM tells operators to add the CDCCLs to the ALS, but Airbus states that it has already done so. Airbus also states that the ALS is part of the type certification (TC) documentation and is not changed by operators.

Although we understand Airbus' concern and welcome any feedback that would improve the readability or usability of an AD, the suggested language is too vague to be legally enforceable, so we cannot use it in this AD. We understand that Airbus has revised its airworthiness limitations document. However, according to 14 CFR 39.7, no person may operate a product unless the requirements of an applicable AD have been met. The burden is placed on the operator, not on the manufacturer, to ensure that the requirements of an AD are met. The requirement, as stated in the NPRM, is for the operator to revise its copy of the

airworthiness limitations document. This ensures that each affected operator maintains a current copy of the required airworthiness limitations.

Concerning Airbus' statement that paragraph (h) of the NPRM does not clearly specify what an operator is expected to with the CDCCLs, we would like to clarify that paragraph (h) requires that affected operators revise their copies of the airworthiness limitations document to include the CDCCL requirements. This is the only requirement imposed under this AD for CDCCLs; once this revision has been accomplished, compliance with paragraph (h) of this AD has been completed. Subsequently, 14 CFR 91.403(c) requires an affected operator to comply with the revised Airworthiness Limitations document. Ensuring that one's maintenance program and the actions of its maintenance personnel are in accordance with the Airworthiness Limitations is required, but not by the AD. According to 14 CFR 91.403(c), no person may operate an aircraft for which airworthiness limitations have been issued unless those limitations have been complied with. Therefore, there is no need to further expand the requirements of the AD beyond that which was proposed because section 91.403(c) already imposes the appropriate required action after the airworthiness limitations are revised. We have not changed this AD in this regard.

**Change to Paragraph (f)**

We have also clarified the compliance time in paragraph (f) of this AD by adding the word ''thereafter'' to more clearly state that * * * the repetitive inspections must be accomplished thereafter * * *''

**Conclusion**

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Costs of Compliance**

This AD affects about 69 airplanes of U.S. registry. The required actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $11,040, or $160 per airplane.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–21–14 Airbus:** Amendment 39–15232. Docket No. FAA–2007–27925; Directorate Identifier 2006–NM–183–AD.

**Effective Date**

(a) This AD becomes effective November 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Airbus Model A310 series airplanes, certificated in any category.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections and critical design configuration control limitations (CDCCLs). Compliance with the operator maintenance documents is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections and CDCCLs, the operator may not be able to accomplish the inspections and CDCCLs described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections and CDCCLs that will preserve the critical ignition source prevention feature of the affected fuel system.

**Unsafe Condition**

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Revise Airworthiness Limitations Section (ALS) To Incorporate Fuel Maintenance and Inspection Tasks**

(f) Within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A310 ALS Part 5—Fuel Airworthiness Limitations, dated May 31, 2006, as defined in Airbus A310 Fuel Airworthiness Limitations, Document 95A.1930/05, Issue 2, dated May 11, 2007 (approved by the European Aviation Safety Agency (EASA) on July 6, 2007), Section 1, ''Maintenance/Inspection Tasks.'' For all tasks identified in Section 1 of Document 95A.1930/05, the initial compliance times start from the later

of the times specified in paragraphs (f)(1) and (f)(2) of this AD, and the repetitive inspections must be accomplished thereafter at the intervals specified in Section 1 of Document 95A.1930/05, except as provided by paragraph (g) of this AD.

(1) The effective date of this AD.

(2) The date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

**Note 2:** Airbus Operator Information Telex SE 999.0079/07, Revision 01, dated August 14, 2007, identifies the applicable sections of the Airbus A310 airplane maintenance manual necessary for accomplishing the tasks specified in Section 1 of Document 95A.1930/05.

**Initial Compliance Time for Task 28–18–00–03–1**

(g) For Task 28–18–00–03–1 identified in Section 1 of Document 95A.1930/05, ''Maintenance/Inspection Tasks,'' of Airbus A310 Fuel Airworthiness Limitations, Document 95A.1930/05, Issue 2, dated May 11, 2007 (approved by the EASA on July 6, 2007): The initial compliance time is the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD. Thereafter, Task 28–18–00–03–1 must be accomplished at the repetitive interval specified in Section 1 of Document 95A.1930/05.

(1) Prior to the accumulation of 40,000 total flight hours.

(2) Within 72 months or 20,000 flight hours after the effective date of this AD, whichever occurs first.

**Revise ALS To Incorporate CDCCLs**

(h) Within 12 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A310 ALS Part 5—Fuel Airworthiness Limitations, dated May 31, 2006, as defined in Airbus A310 Fuel Airworthiness Limitations, Document 95A.1930/05, Issue 2, dated May 11, 2007 (approved by the EASA on July 6, 2007), Section 2, ''Critical Design Configuration Control Limitations.''

**No Alternative Inspections, Inspection Intervals, or CDCCLs**

(i) Except as provided by paragraph (j) of this AD: After accomplishing the actions specified in paragraphs (f) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Related Information**

(k) EASA airworthiness directive 2007–0096 R1, dated May 2, 2007, also addresses the subject of this AD.

**Material Incorporated by Reference**

(l) You must use Airbus A310 ALS Part 5—Fuel Airworthiness Limitations, dated May 31, 2006; and Airbus A310 Fuel Airworthiness Limitations, Document 95A.1930/05, Issue 2, dated May 11, 2007; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 5, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20221 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28909; Directorate Identifier 2007–NM–135–AD; Amendment 39–15230; AD 2007–21–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found cases in which some wiring harnesses were not protected in accordance with SFAR–88 (Special Federal Aviation Regulation No. 88) requirements.

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective November 20, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 20, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 8, 2007 (72 FR 44435). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found cases in which some wiring harnesses were not protected in accordance with SFAR–88 (Special Federal Aviation Regulation No. 88) requirements.

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective action includes installing heat shrinkable sleeves on the inspection and refueling panel illumination lights wiring, and installing nipples on the terminal lugs to protect the wire terminals. You may obtain further information by examining the MCAI in the AD docket.

### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

### Conclusion

We reviewed the available data and determined that air safety and the

public interest require adopting the AD as proposed.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

**Costs of Compliance**

We estimate that this AD will affect about 8 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $32 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $4,096, or $512 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2007–21–12 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39–15230. Docket No. FAA–2007–28909; Directorate Identifier 2007–NM–135–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective November 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145LEG–28–0016, Revision 01, dated June 27, 2005.

**Subject**

(d) Air Transport Association (ATA) of America Code 28: Fuel.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found cases in which some wiring harnesses were not protected in accordance with SFAR–88 (Special Federal Aviation Regulation No. 88) requirements.

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective action includes installing heat shrinkable sleeves on the inspection and refueling panel illumination lights wiring, and installing nipples on the terminal lugs to protect the wire terminals.

**Actions and Compliance**

(f) Unless already done, do the following actions.

(1) Within 5,000 flight hours after the effective date of this AD, install heat shrinkable sleeves on the inspection and refueling panel illumination lights wiring, and install nipples on the terminal lugs to protect the wire terminals, in accordance with the detailed instructions and procedures in EMBRAER Service Bulletin 145LEG–28–0016, Revision 01, dated June 27, 2005.

(2) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 145LEG–28–0016, dated March 8, 2004, are acceptable for compliance with the corresponding actions of this AD.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the

FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI Brazilian Airworthiness Directive 2006–07–02, effective August 21, 2006, and EMBRAER Service Bulletin 145LEG–28–0016, Revision 01, dated June 27, 2005, for related information.

**Material Incorporated by Reference**

(i) You must use EMBRAER Service Bulletin 145LEG–28–0016, Revision 01, dated June 27, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sa~o Jose dos Campos—SP, Brazil.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 5, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20222 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28663; Directorate Identifier 2006–NM–223–AD; Amendment 39–15221; AD 2007–21–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300–600 Series Airplanes; and Model A310 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

* * * the FAA set-up in January 1999 an Ageing Transport Systems Rulemaking Advisory Committee (ATSRAC) to investigate the potential safety issues in aging aircraft as a result of wear and degradation in their operating systems.

Under this plan, all Holders of type Certificates aircraft are required to conduct a design review, to preclude the occurrence of potential unsafe conditions as the aircraft aged.

* * * * *

The unsafe condition is degradation of the fuel system, which could result in loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective November 20, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 20, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 10, 2007 (72 FR 37472). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

* * * the FAA issued in July 1996 an Aging Non-structural Systems plan to address the White House Commission an Aviation Safety and Security (WHCSS) report.

To help fulfill the actions specified in this Aging Systems plan, the FAA set-up in January 1999 an Ageing Transport Systems Rulemaking Advisory Committee (ATSRAC) to investigate the potential safety issues in aging aircraft as a result of wear and degradation in their operating systems.

Under this plan, all Holders of type Certificates aircraft are required to conduct a design review, to preclude the occurrence of potential unsafe conditions as the aircraft aged.

Further to AIRBUS investigations on this subject, corrected measures intended to improve the design of A310 and A300–600 fleet against potential unsafe conditions as the aircraft aged, are rendered mandatory by this AD.

The unsafe condition is degradation of the fuel system, which could result in loss of the airplane. The corrective actions include:

- Modify emergency power electrical routing.
- Inspect certain wire routes and do necessary corrective action (repair chafed or burned wiring, damaged clamps, and introduce self-vulcanizing silicone tape for wrapping the cable bundle at each clamping position).
- Secure electrical routing.
- Relocate temperature sensors and modify wires.

You may obtain further information by examining the MCAI in the AD docket.

### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

### Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in

general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

**Costs of Compliance**

Based on the service information, we estimate that this AD affects about 193 products of U.S. registry. We estimate that it takes about 267 work hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts cost about $17,637 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to be $7,526,421, or $38,997 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: ''Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, part A, subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2007–21–03 Airbus:** Amendment 39–15221. Docket No. FAA–2007–28663; Directorate Identifier 2006–NM–223–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective November 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A300–600 series airplanes; and Model A310 series airplanes; certificated in any category; all certified models, all serial numbers.

**Subjects**

(d) Electrical Power, Hydraulic Power, and Pneumatic.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * the FAA issued in July 1996 an Aging Non-structural Systems plan to address the White House Commission an Aviation Safety and Security (WHCSS) report.

To help fulfill the actions specified in this Aging Systems plan, the FAA set-up in January 1999 an Ageing Transport Systems Rulemaking Advisory Committee (ATSRAC) to investigate the potential safety issues in aging aircraft as a result of wear and degradation in their operating systems.

Under this plan, all Holders of type Certificates aircraft are required to conduct a design review, to preclude the occurrence of potential unsafe conditions as the aircraft aged.

Further to AIRBUS investigations on this subject, corrected measures intended to improve the design of A310 and A300–600 fleet against potential unsafe conditions as the aircraft aged, are rendered mandatory by this AD.

The unsafe condition is degradation of the fuel system, which could result in loss of the airplane. The corrective actions include: Modify emergency power electrical routing; inspect certain wire routes and do necessary corrective action (repair chafed or burned wiring, damaged clamps, and introduce self-vulcanizing silicone tape for wrapping the cable bundle at each clamping position); secure electrical routing; and relocate temperature sensors and modify wires.

**Actions and Compliance**

(f) Unless already done, do the following actions.

(1) For Model A310 series airplanes, having received Airbus Modification 05911 and/or Airbus Modification 05910, or having received application of Airbus Service Bulletin A310–24–2014 or A310–24–2099 in service; and Model A300–600 series airplanes having received in production Airbus Modification 06213, or having received application of Airbus Service Bulletin A300–24–6008 (Airbus Modification 06214) in service; except airplanes on which Airbus Modification 10510 has been embodied in production or airplanes on which Airbus Service Bulletin A310–24–2056, dated June 8, 1993; Revision 1, dated November 28, 1994; or Revision 02, dated June 9, 2006; or Airbus Service Bulletin A300–24–6045, dated June 8, 1993; Revision 1, dated June 2, 1994; Revision 2, dated August 11, 1994; Revision 3, dated November 28, 1994; Revision 4, dated May 5, 1995; or Revision 05, dated June 9, 2006; has been embodied in service: Within 36 months after the effective date of this AD, modify the emergency power electrical routing under floor at pressure seal interface plates between FR (frame) 52 and FR53, in accordance with the instructions given in Airbus Service Bulletin A310–24–2056, Revision 02, dated June 9, 2006; or A300–24–6045, Revision 05, dated June 9, 2006; as applicable.

(2) For Model A310 series airplanes, manufacturing serial number (MSN) 0162 up to 0706 included, and Model A300–600 series airplanes, MSN 0252 up to 0794 included; except airplanes on which the one-time detailed visual inspection in accordance with Airbus Service Bulletin A310–24–2079, dated March 28, 2000; or Revision 01, dated April 27, 2006; or Airbus Service Bulletin A300–24–6069, dated March 28, 2000; or Revision 01, dated April 27, 2006; has been performed in service: Within 36 months after the effective date of this AD, perform a one-time detailed visual inspection of the electrical routes 1P and 2P between the rear panel 120VU (volt unit) and the circuit breaker panel 800VU located in the forward compartment and in case of finding, before further flight, repair chafed or burned wiring, damaged clamps and introduce self-vulcanizing silicone tape for wrapping the cable bundle of each clamping position, in accordance with the instructions given in Airbus Service Bulletin A310–24–2079, Revision 01, dated April 27, 2006; or Airbus Service Bulletin A300–24–6069, Revision 01, dated April 27, 2006; as applicable.

(3) For Model A310 series airplanes, equipped with Eaton (formerly Vickers) electrical pumps, except airplanes on which Airbus Modification 10017 has been embodied in production or airplanes on which Airbus Service Bulletin A310–29–2036, dated August 10, 1992; Revision 1, dated December 16, 1992; Revision 2, dated September 20, 1993; or Revision 03, dated June 9, 2006; have been embodied in service: Within 36 months after the effective date of this AD, secure the electrical routing 1P, 2P, and the hydraulic line running to pump 11GE, in the hydraulic bay at FR54 by changing the routes and by adding a spacer and a clamp to prevent any chafing between them, in accordance with the instructions given in Airbus Service Bulletin A310–29–2036, Revision 03, dated June 9, 2006.

(4) For Model A310 series airplanes, except airplanes on which Airbus Modification 06447 has been embodied in production or airplanes on which Airbus Service Bulletin A310–36–2010, Revision 2, dated September 26, 1989; or Revision 03, dated May 24, 2006; have been embodied in service: Within 36 months after the effective date of this AD, relocate the temperature sensors and modify the associated wires in accordance with the instructions of Airbus Service Bulletin A310–36–2010, Revision 03, dated May 24, 2006.

(5) Actions done before the effective date of this AD in accordance with any applicable service bulletin in Table 1 of this AD are acceptable for compliance with the corresponding provisions of paragraph (f) of this AD.

TABLE 1.—ACCEPTABLE EARLIER REVISIONS OF SERVICE BULLETINS

| Airbus service bulletin | Revision level | Date |
|---|---|---|
| A300–24–6045 | Original | June 8, 1993. |
| | 1 | June 2, 1994. |
| | 2 | August 11, 1994. |
| | 3 | November 28, 1994. |
| | 4 | May 5, 1995. |
| A300–24–6069 | Original | March 28, 2000. |
| A310–24–2056 | Original | June 8, 1993. |
| | 1 | November 28, 1994. |
| A310–24–2079 | Original | March 28, 2000. |
| A310–29–2036 | 1 | December 16, 1992. |
| | 2 | September 20, 1993. |
| A310–36–2010 | 2 | September 26, 1989. |

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI EASA Airworthiness Directive 2006–0285R1, dated November 13, 2006, and the Airbus Service Bulletins in Table 2 of this AD for related information.

TABLE 2.—AIRBUS SERVICE BULLETINS

| Service bulletin | Revision level | Date |
|---|---|---|
| A300–24–6045 | 05 | June 9, 2006. |
| A300–24–6069 | 01 | April 27, 2006. |
| A310–24–2056 | 02 | June 9, 2006. |
| A310–24–2079 | 01 | April 27, 2006. |
| A310–29–2036 | 03 | June 9, 2006. |
| A310–36–2010 | 03 | May 24, 2006. |

**Material Incorporated by Reference**

(i) You must use the service information specified in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise. Airbus Service Bulletin A310–24–2014, Revision 7, dated January 17, 1990, contains the following effective pages:

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| 1, 687–688, 858, 946, 1067–1068 | 7 | January 17, 1990. |
| 2–2a, 8a–9, 11–16, 19–20, 671–686, 689–690, 692, 694, 696, 698–699, 701–704, 707–710, 714–715, 717–720, 724–729, 732–752, 754–834, 837–849, 851–852, 855–857, 859–860, 863–874, 877–882, 885–896, 903–928, 937–945, 947–980, 987–990, 993–994, 997–1004, 1007–1016, 1023–1024, 1027–1030, 1033–1058, 1061–1062, 1065–1066, 1069–1082, 1085–1086, 1089–1100, 1103–1112, 1115–1116, 1118–1119, 1122–1127, 1129–1131. | 5 | November 20, 1989. |
| 3–7, 10, 17–18, 21, 23–92, 95–102, 109–117, 119–122, 124–127, 129–131, 134–135, 137–140, 142, 145–146, 149–151, 154–168, 172–174, 176–177a, 177f, 178–264, 266, 268, 270, 273–276, 279–282, 287–292, 294, 303–322, 325–327, 329–335, 337–358, 361–362, 365–374, 377–395, 397–408, 411–432, 435–436, 439–446, 451–454, 457–458, 467–472, 477–478, 487–494, 497–504, 511–514, 517–522, 525–528, 533–542, 551–560, 563–572, 577–580, 583–608, 611–612, 614–616. | 2 | September 22, 1986. |
| 8, 103–104, 106–107, 133, 136, 141, 143–144, 152, 169–171, 175, 177c–177e, 265, 271–272, 277–278, 285–286, 293, 295–300, 323–324, 328, 359–360, 363–364, 409–410, 447–450, 461–464, 473–476, 495–496, 505–506, 547–550, 573–574, 609–610, 613, 617–659, 662, 664–670. | 3 | January 22, 1987. |
| 22, 93–94a, 105, 108, 118, 123, 128, 132, 147–148, 153–153b, 177b, 177g–177k, 267, 269, 283–284, 301–302, 336–336b, 375–376, 396, 433–434, 437–438, 455–456, 459–460, 465–466, 479–486, 507–510, 515–516, 523–524, 529–532, 543–546, 561–562, 575–576, 581–582, 660–661, 663. | 4 | March 30, 1987. |
| 691, 693, 695, 697, 700, 705–706, 711–713, 716, 721–723, 730–731, 753, 835–836, 850, 853–854, 861–862a, 875–876, 883–884, 897–902, 929–936, 981–986, 991–992, 995–996, 1005–1006, 1017–1022, 1025–1026, 1031–1032, 1059–1060, 1063–1064, 1083–1084, 1087–1088, 1101–1102, 1113–1114, 1117, 1120–1121, 1128. | 6 | March 28, 1989. |

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

| Airbus service bulletin | Revision level | Date |
|---|---|---|
| A300–24–6045 | 05 | June 9, 2006. |
| A300–24–6069 | 01 | April 27, 2006. |
| A310–24–2014 | 7 | January 17, 1990. |
| A310–24–2056 | 02 | June 9, 2006. |
| A310–24–2079 | 01 | April 27, 2006. |
| A310–24–2099, including Appendices A, B, and C | 01 | October 4, 2006. |
| A310–29–2036 | 03 | June 9, 2006. |
| A310–36–2010 | 03 | May 24, 2006. |

Issued in Renton, Washington, on September 21, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20027 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30575; Amdt. No. 3240]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes in the National Airspace System, such as the commissioning of new navigational facilities, adding of new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 16, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 2007.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.*

*gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P-NOTAMs.

The SIAPs, as modified by FDC P-NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 5, 2007.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| FDC date | State | City | Airport | FDC no. | Subject |
|---|---|---|---|---|---|
| 09/26/07 .... | OH | Toledo ..... | Metcalf Field ..... | 7/8560 | Takeoff minimums and obstacle departure procedures, AMDT 2. |

[FR Doc. E7–20210 Filed 10–15–07; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30574; Amdt. No. 3239]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 16, 2007. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 2007.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry. J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on October 5, 2007.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective 22 NOV 2007*

Hyannis, MA, Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Amdt 9
Atlantic City, NJ, Atlantic City International, COPTER ILS OR LOC/DME RWY 13, Amdt 1A
Franklin, PA, Venango Regional, RNAV (GPS) RWY 3, Amdt 1

*Effective 20 DEC 2007*

Scottsboro, AL, Scottsboro Muni-Word Field, RNAV (GPS) RWY 4, Orig
Scottsboro, AL, Scottsboro Muni-Word Field, RNAV (GPS) RWY 22, Orig
Scottsboro, AL, Scottsboro Muni-Word Field, Takeoff Minimums and Obstacle DP, Orig
New Stuyahok, AK, New Stuyahok, RNAV (GPS) RWY 14, Orig
New Stuyahok, AK, New Stuyahok, RNAV (GPS) RWY 32, Orig
New Stuyahok, AK, New Stuyahok, RNAV (GPS) RWY 34, Orig, CANCELLED
New Stuyahok, AK, New Stuyahok, RNAV (GPS) RWY 16, Orig, CANCELLED
New Stuyahok, AK, New Stuyahok, Takeoff Minimums and Obstacle DP, Amdt 1
Tanana, AK, Ralph M Calhoun Meml, VOR/DME RWY 7, Amdt 2
Tanana, AK, Ralph M Calhoun Meml, VOR–A, Amdt 7A, CANCELLED
Tanana, AK, Ralph M Calhoun Meml, Takeoff Minimums and Obstacle DP, Amdt 1
Concord, CA, Buchanan Field, Takeoff Minimums and Obstacle DP, Amdt 2
Murrieta/Temecula, CA, French Valley, RNAV (GPS) RWY 18, Amdt 1
Springfield, CO, Springfield Muni, RNAV (GPS) RWY 17, Orig
Springfield, CO, Springfield Muni, Takeoff Minimums and Textual DP, Orig
Lakeland, FL, Lakeland Linder Regional, RNAV (GPS) RWY 5, Orig
Lakeland, FL, Lakeland Linder Regional, RNAV (GPS) RWY 23, Orig
Lakeland, FL, Lakeland Linder Regional, GPS RWY 23, Orig, CANCELLED
Baxley, GA, Baxley Muni, RNAV (GPS) RWY 26, Orig
Baxley, GA, Baxley Muni, Takeoff Minimums and Obstacle DP, Orig
Cordele, GA, Crisp County-Cordele, RNAV (GPS) RWY 5, Orig
Cordele, GA, Crisp County-Cordele, RNAV (GPS) RWY 23, Orig
Cordele, GA, Crisp County-Cordele, VOR/DME RWY 23, Amdt 11
Cordele, GA, Crisp County-Cordele, NDB OR GPS RWY 10, Amdt 4B CANCELLED
Dublin, GA, W H 'Bud' Barron, ILS OR LOC RWY 2, Amdt 2
Dublin, GA, W H 'Bud' Barron, RNAV (GPS) RWY 2, Orig
Dublin, GA, W H 'Bud' Barron, RNAV (GPS) RWY 20, Orig
Dublin, GA, W H 'Bud' Barron, VOR–A, Amdt 4
Dublin, GA, W H 'Bud' Barron, GPS RWY 2, Orig (CANCELLED)
Dublin, GA, W H 'Bud' Barron, GPS RWY 20, Orig (CANCELLED)
Eastman, GA, Heart of Georgia Regional, ILS OR LOC RWY 2, Amdt 1
Eastman, GA, Heart of Georgia Regional, RNAV (GPS) RWY 2, Amdt 1
Eastman, GA, Heart of Georgia Regional, RNAV (GPS) RWY 20, Amdt 1
Eastman, GA, Heart of Georgia Regional, NDB RWY 2, Amdt 2
Eastman, GA, Heart of Georgia Regional, VOR/DME–A, Amdt 8
Macon, GA, Macon Downtown, RNAV (GPS) RWY 10, Orig
Macon, GA, Macon Downtown, RNAV (GPS) RWY 28, Orig
Macon, GA, Macon Downtown, LOC RWY 10, Amdt 6
Macon, GA, Macon Downtown, VOR/DME–B, Amdt 3
Macon, GA, Macon Downtown, VOR–A, Amdt 6
McRae, GA, Telfair-Wheeler, RNAV (GPS) RWY 21, Orig
McRae, GA, Telfair-Wheeler, NDB RWY 21, Amdt 9
McRae, GA, Telfair-Wheeler, Takeoff Minimums and Obstacle DP, Orig
Milledgeville, GA, Baldwin County, RNAV (GPS) RWY 10, Orig
Milledgeville, GA, Baldwin County, RNAV (GPS) RWY 28, Orig
Milledgeville, GA, Baldwin County, NDB RWY 28, Amdt 2
Milledgeville, GA, Baldwin County, GPS RWY 10, Orig-B, CANCELLED
Milledgeville, GA, Baldwin County, GPS RWY 28, Orig-B, CANCELLED
Perry, GA, Perry-Houston County, Takeoff Minimums and Obstacle DP, Orig
Swainsboro, GA, Emanuel County, RNAV (GPS) RWY 13, Orig
Swainsboro, GA, Emanuel County, RNAV (GPS) RWY 31, Orig
Swainsboro, GA, Emanuel County, LOC/NDB RWY 13, Amdt 1
Swainsboro, GA, Emanuel County, NDB RWY 13, Amdt 1
Swainsboro, GA, Emanuel County, VOR/DME–A, Amdt 3
Swainsboro, GA, Emanuel County, Takeoff Minimums and Obstacle DP, Amdt 1
Paris, IL, Edgar County, RNAV (GPS) RWY 9, Orig
Paris, IL, Edgar County, RNAV (GPS) RWY 27, Orig
Paris, IL, Edgar County, NDB RWY 27, Amdt 10
Paris, IL, Edgar County, Takeoff Minimums and Obstacle DP, Orig
Hartford, KY, Ohio County, Takeoff Minimums and Obstacle DP, Orig
Detroit, MI, Coleman A. Young Muni, Takeoff Minimums and Obstacle DP, Amdt 6
South St Paul, MN, South St Paul Muni-Richard E Fleming Field, LOC RWY 34, Amdt 1
South St Paul, MN, South St Paul Muni-Richard E Fleming Field, Takeoff Minimums and Obstacle DP, Orig
St Louis, MO, Lambert-St Louis Intl, VOR RWY 6, Orig-A, CANCELLED
St Louis, MO, Lambert-St Louis Intl, VOR RWY 24, Orig-A, CANCELLED
Columbia, MS, Columbia-Marion County, Takeoff Minimums and Obstacle DP, Orig
Princeton/Rocky Hill, NJ, Princeton, VOR/DME RNAV OR GPS RWY 10, Amdt 3, CANCELLED
Casselton, ND, Casselton Robert Miller Rgnl, RNAV (GPS) RWY 13, Orig
Casselton, ND, Casselton Robert Miller Rgnl, RNAV (GPS) RWY 31, Orig
Casselton, ND, Casselton Robert Miller Rgnl, VOR/DME RWY 31, Amdt 1
Casselton, ND, Casselton Robert Miller Rgnl, Takeoff Minimums and Obstacle DP, Orig
Washington Court House, OH, Fayette County, RNAV (GPS) RWY 23, Orig
Washington Court House, OH, Fayette County, NDB RWY 23, Amdt 5
Washington Court House, OH, Fayette County, GPS RWY 23, Orig-A, CANCELLED
Washington Court House, OH, Fayette County, Takeoff Minimums and Obstacle DP, Amdt 2
Oklahoma City, OK, Wiley Post, Takeoff Minimums and Obstacle DP, Amdt 4

Pendleton, OR, Eastern Oregon Regional at Pendleton, ILS OR LOC/DME RWY 25, Amdt 24

Allentown, PA, Allentown/Queen City Muni, RNAV (GPS) RWY 7, Orig

Allentown, PA, Allentown/Queen City Muni, VOR–B, Amdt 7

Allentown, PA, Allentown/Queen City Muni, GPS RWY 7, Orig, CANCELLED

Collegeville, PA, Perkiomen Valley, Takeoff Minimums and Obstacle DP, Orig

Barnwell, SC, Barnwell Rgnl, RNAV (GPS) RWY 35, Orig

Union City, TN, Everett-Stewart, VOR/DME–A, Amdt 8

Culpeper, VA, Culpeper Regional, Takeoff Minimums and Obstacle DP, Orig

New Richmond, WI, New Richmond Regional, RNAV (GPS) RWY 14, Amdt 1

New Richmond, WI, New Richmond Regional, RNAV (GPS) RWY 32, Amdt 1

New Richmond, WI, New Richmond Regional, NDB RWY 14, Amdt 3

New Richmond, WI, New Richmond Regional, Takeoff Minimums and Obstacle DP, Orig

Prairie Du Sac, WI, Sauk-Prairie, RNAV (GPS) RWY 18, Orig

Prairie Du Sac, WI, Sauk-Prairie, RNAV (GPS) RWY 36, Orig

Prairie Du Sac, WI, Sauk-Prairie, Takeoff Minimums and Obstacle DP, Orig

Charleston, WV, Yeager, RADAR–1, Amdt 12A, CANCELLED

Hulett, WY, Hulett Muni, RNAV (GPS)–A, Orig

Hulett, WY, Hulett Muni, Takeoff Minimums and Obstacle DP, Orig

Jackson, WY, Jackson Hole, ILS OR LOC Z RWY 19, Orig

*Effective 14 FEB 2008*

San Francisco, CA, San Francisco Intl, RNAV (GPS) X RWY 10R, Orig-B

Clinton, MD, Washington Executive/Hyde Field, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. E7–20212 Filed 10–15–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

## 19 CFR PARTS 10, 24, 102, 162, 163, and 178

**USCBP–2007–0063**
**CBP Dec. 07–81**

**RIN 1505–AB81**

## United States-Bahrain Free Trade Agreement

**AGENCIES:** Bureau of Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Interim regulations; solicitation of comments.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (''CBP'') regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States-Bahrain Free Trade Agreement entered into by the United States and the Kingdom of Bahrain.

**DATES:** Interim rule effective October 16, 2007; comments must be received by December 17, 2007.

**ADDRESSES:** You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2007–0063.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket*: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW. (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

**FOR FURTHER INFORMATION CONTACT:**

*Textile Operational Aspects:* Robert Abels, Office of International Trade, (202) 344–1959.

*Other Operational Aspects*: Seth Mazze, Office of International Trade, (202) 344–2634.

*Audit Aspects:* Mark Hanson, Office of International Trade, (202) 863–3065.

*Legal Aspects:* Holly Files, Office of International Trade, (202) 572–8817.

**SUPPLEMENTARY INFORMATION:**

### Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

### Background

On September 14, 2004, the United States and the Kingdom of Bahrain (the ''Parties'') signed the U.S.-Bahrain Free Trade Agreement (''BFTA'' or ''Agreement''). The stated objectives of the BFTA include creating new employment opportunities and raising the standard of living for the citizens of the Parties by liberalizing and expanding trade between them; enhancing the competitiveness of the enterprises of the Parties in global markets; establishing clear and mutually advantageous rules governing trade between the Parties; eliminating bribery and corruption in international trade and investment; fostering creativity and innovation by improving technology and enhancing the protection and enforcement of intellectual property rights; strengthening the development and enforcement of labor and environmental laws and policies; and establishing an expanded free trade area in the Middle East, thereby contributing to economic liberalization and development in the region.

The provisions of the BFTA were adopted by the United States with the enactment of the United States-Bahrain Free Trade Agreement Implementation Act (the ''Act''), Public Law 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note), on January 11, 2006. Section 205 of the Act requires that regulations be prescribed as necessary.

On July 27, 2006, the President signed Proclamation 8039 to implement the provisions of the BFTA. The proclamation, which was published in the **Federal Register** on August 1, 2006 (71 FR 43635), modified the Harmonized Tariff Schedule of the United States (''HTSUS'') as set forth in Annexes I and II of Publication 3830 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 30, incorporating the relevant BFTA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the BFTA where the special program indicator ''BH'' appears in parenthesis in the ''Special'' rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XIV to Chapter 99 to provide for temporary tariff rate quotas and applicable safeguards implemented by the BFTA.

U.S. Customs and Border Protection (''CBP'') is responsible for administering the provisions of the BFTA and the Act that relate to the importation of goods into the United States from Bahrain. Those customs-related BFTA provisions that require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Initial Provisions and Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Textiles and Apparel), Chapter Four (Rules of Origin), and Chapter Five (Customs Administration).

These implementing regulations incorporate certain general definitions set forth in Article 1.3 of the BFTA. These regulations also implement Article 2.6 (Goods Re-entered After Repair or Alteration) of Chapter Two of the BFTA.

Chapter Three of the BFTA sets forth the measures relating to trade in textile and apparel goods between Bahrain and the United States under the BFTA. The provisions within Chapter Three that require regulatory action by CBP are Article 3.2 (Rules of Origin and Related Matters), Article 3.3 (Customs Cooperation), and Article 3.4 (Definitions).

Chapter Four of the BFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Bahrain (BFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as specified in the Agreement. Under Article 4.1, originating goods may be grouped in three broad categories: (1) Goods that are wholly the growth, product, or manufacture of one or both of the Parties; (2) goods (other than those covered by the product-specific rules set forth in Annex 3–A or Annex 4–A) that are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties, and that have a minimum value-content, *i.e.*, at least 35 percent of the good's appraised value must be attributed to the cost or value of materials produced in one or both of the Parties plus the direct costs of processing operations performed in one or both of the Parties; and (3) goods that satisfy the product-specific rules set forth in Annex 3–A (textile or apparel goods) or Annex 4–A (certain non-textile or non-apparel goods).

Article 4.2 explains that the term ''new or different article of commerce'' means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. Article 4.3 provides that a good will not be considered to be a new or different article of commerce as the result of undergoing simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

Article 4.4 provides for the accumulation of production in the territory of one or both of the Parties in determining whether a good qualifies as originating under the BFTA. Articles 4.5 and 4.6 set forth the rules for calculating the value of materials and the direct costs of processing operations, respectively, for purposes of determining whether a good satisfies the 35 percent value-content requirement.

Articles 4.7 through 4.9 consist of additional sub-rules applicable to originating goods, involving retail packaging materials, packing materials for shipment, indirect materials, and transit and transshipment. In addition, Articles 4.10 and 4.11 set forth the procedural requirements that apply under the BFTA, in particular with regard to importer claims for preferential tariff treatment. Article 4.14 provides definitions of certain terms used in Chapter Four of the BFTA. The basic rules of origin in Chapter Four of the BFTA are set forth in General Note 30, HTSUS.

Chapter Five sets forth the customs operational provisions related to the implementation and administration of the BFTA.

In order to provide transparency and facilitate their use, the majority of the BFTA implementing regulations set forth in this document have been included within new Subpart N in Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which BFTA implementation is more appropriate in the context of an existing regulatory provision, the BFTA regulatory text has been incorporated in an existing Part within the CBP regulations. In addition, this document sets forth several cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new BFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

**Discussion of Amendments**

*Part 10*

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Bahrain for which, like goods originating in Canada, Mexico, Singapore, Chile, and Morocco, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of BFTA Article 2.5 (temporary admission of goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

*Part 10, Subpart N*

General Provisions

Section 10.801 outlines the scope of new Subpart N, Part 10. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart N, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart N, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.802 sets forth definitions of common terms used in multiple contexts or places within Subpart N,

Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 1.3 of the BFTA and § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions which apply in a more limited Subpart N, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.803 sets forth the procedure for claiming BFTA tariff benefits at the time of entry.

Section 10.804, as provided in BFTA Article 4.10(b), requires a U.S. importer, upon request, to submit a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. Included in § 10.804 is a provision that the declaration may be used either for a single importation or for multiple importations of identical goods.

Section 10.805 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment under the BFTA. As provided in BFTA Article 4.10(a), this section states that a U.S. importer who makes a claim for preferential tariff treatment for a good is deemed to have certified that the good qualifies for such treatment.

Section 10.806 provides that the importer's declaration is not required for certain non-commercial or low-value importations.

Section 10.807 implements the portion of BFTA Article 4.10 concerning the maintenance of records necessary for the preparation of the declaration.

Section 10.808, which is based on BFTA Article 4.11.1, provides for the denial of BFTA tariff benefits if the importer fails to comply with any of the requirements of Subpart N, Part 10, CBP regulations.

Rules of Origin

Sections 10.809 through 10.817 provide the implementing regulations regarding the rules of origin provisions of General Note 30, HTSUS, Article 3.2 and Chapter Four of the BFTA, and § 202 of the Act.

Definitions

Section 10.809 sets forth terms that are defined for purposes of the rules of origin. CBP notes that, pursuant to letters of understanding exchanged between the Parties on September 14, 2004, in determining whether a good meets the definition of a ''new or different article of commerce'' in paragraph (i) of § 10.809, the United States should be guided by the provisions of Part 102 of the CBP regulations (19 CFR Part 102).

General Rules of Origin

Section 10.810 includes the basic rules of origin established in Article 4.1 of the BFTA, section 202(b) of the Act, and General Note 30(b), HTSUS.

Paragraph (a) of § 10.810 sets forth the three basic categories of goods that are considered originating goods under the BFTA. Paragraph (a)(1) of § 10.810 specifies those goods that are considered originating goods because they are wholly the growth, product, or manufacture of one or both of the Parties. Paragraph (a)(2) provides that goods are considered originating goods if they: (1) Are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties as determined by application of the provisions of § 102.1 through § 102.21 of the CBP regulations (19 CFR 102.1 102.21); (2) are classified in HTSUS provisions that are not covered by the product-specific rules set forth in General Note 30(h), HTSUS; and (3) meet a 35 percent domestic-content requirement. Finally, paragraph (a)(3) states that goods are considered originating goods if: (1) They are classified in HTSUS provisions that are covered by the product-specific rules set forth in General Note 30(h), HTSUS; (2) each non-originating material used in the production of the good in the territory of one or both of the Parties undergoes an applicable change in tariff classification or otherwise satisfies the requirements specified in General Note 30(h), HTSUS; and (3) the goods meet any other requirements specified in General Note 30, HTSUS.

Paragraph (b) of § 10.810 sets forth the basic rules that apply for purposes of determining whether a good satisfies the 35 percent domestic-content requirement referred to in § 10.810(a)(2).

Paragraph (c) of § 10.810 implements Article 4.3 of the BFTA, relating to the simple combining or packaging or mere dilution exceptions to the ''new or different article of commerce'' requirement of § 10.810(a)(2). Since the language in Article 4.3 of the BFTA (and § 202(i)(7)(B) of the Act) is nearly identical to the language found in § 213(a)(2) of the Caribbean Basin Economic Recovery Act (''CBERA'') (19 U.S.C. 2703(a)(2)), § 10.810(c) incorporates by reference the examples and principles set forth in § 10.195(a)(2) of CBP's implementing CBERA regulations.

Originating Textile or Apparel Goods

Section 10.811(a), as provided for in Article 3.2.6 of the BFTA, sets forth a *de minimis* rule for certain textile or apparel goods that may be considered to qualify as originating goods even though they fail to satisfy the applicable change in tariff classification set out in General Note 30(h). This paragraph also includes an exception to the *de minimis* rule.

Section 10.811(b), which is based on Article 3.2.7 of the BFTA, sets forth a special rule for textile or apparel goods classifiable under General Rule of Interpretation 3, HTSUS, as goods put up in sets for retail sale.

Accumulation

Section 10.812, which is derived from BFTA Article 4.4, sets forth the rule by which originating goods or materials from the territory of a Party that are used in the production of a good in the territory of the other Party will be considered to originate in the territory of such other Party. In addition, this section also establishes that a good or material that is produced by one or more producers in the territory of one or both of the Parties is an originating good or material if the article satisfies all of the applicable requirements of the rules of origin of the BFTA.

Value of Materials

Section 10.813 implements Article 4.5 of the BFTA, relating to the calculation of the value of materials that may be applied toward satisfaction of the 35 percent value-content requirement.

Direct Costs of Processing Operations

Section 10.814, which reflects Article 4.6 of the BFTA, sets forth provisions regarding the calculation of direct costs of processing operations for purposes of the 35 percent value-content requirement.

Packaging and Packing Materials and Containers for Retail Sale and for Shipment

Section 10.815 is based on Article 4.7 of the BFTA and provides that retail packaging materials and packing materials for shipment are to be disregarded in determining whether a good qualifies as originating under the BFTA, except to the extent that the value of such packaging and packing materials may be included for purposes of meeting the 35 percent value-content requirement.

Indirect Materials

Section 10.816, which is derived from Article 4.8 of the BFTA, provides that indirect materials will be disregarded in determining whether a good qualifies as

an originating good under the BFTA, except to the extent that the cost of such indirect materials may be included toward satisfying the 35 percent value-content requirement.

Imported Directly

Section 10.817(a) sets forth the basic rule, found in Article 4.1 of the BFTA, that a good must be imported directly from the territory of a Party into the territory of the other Party to qualify as an originating good under the BFTA. This paragraph further provides that, as set forth in Article 4.9 of the BFTA, a good will not be considered to be imported directly if, after exportation from the territory of a Party, the good undergoes production, manufacturing, or any other operation outside the territories of the Parties, other than certain minor operations.

Paragraph (b) of § 10.817 provides that an importer making a claim for preferential tariff treatment under the BFTA may be required to demonstrate, through the submission of documentary evidence, that the ''imported directly'' requirement was satisfied.

Tariff Preference Level

Section 10.818 sets forth the procedures for claiming BFTA tariff benefits for non-originating fabric, apparel, or made-up goods entitled to preference under an applicable tariff preference level (''TPL'').

Section 10.819, which is based on Articles 3.2.8(a) through 3.2.8(d), describes the non-originating fabric, apparel, and made-up goods that are eligible for TPL claims under the BFTA.

Section 10.820 is based on Article 3.2.10 of the BFTA and establishes that, at the written request of the Government of Bahrain, CBP will require an importer claiming preferential treatment on a non-originating cotton or man-made fiber good specified in § 10.819 to submit a certificate of eligibility.

Section 10.821 reflects Article 3.2.11 of the BFTA. Paragraph (a) of § 10.821 provides that an importer claiming preferential treatment on a non-originating cotton or man-made fiber good specified in § 10.819 must submit, at the request of the port director, a declaration setting forth all pertinent production information. Paragraph (b) of § 10.821 requires that an importer must retain all records relied upon to prepare the declaration for a period of five years.

Section 10.822 establishes that non-originating fabric or apparel goods are entitled to preferential tariff treatment under an applicable TPL only if they are imported directly from the territory of a Party into the territory of the other Party.

Section 10.823 provides for the denial of a TPL claim if the importer fails to comply with any applicable requirement under Subpart N, Part 10, CBP regulations, including the failure to provide documentation, when requested by CBP, establishing that the good was imported directly from the territory of a Party into the territory of the other Party.

Origin Verifications and Determinations

Sections 10.824 implements BFTA Article 4.11.2 by providing that a claim for BFTA preferential tariff treatment, including any information submitted in support of the claim, will be subject to such verification as CBP deems necessary. This section further sets forth the circumstances under which a claim may be denied based on the results of the verification.

Section 10.825 implements BFTA Article 4.11.3 by providing that CBP will issue a determination to the importer when CBP determines that a claim for BFTA preferential tariff treatment should be denied based on the results of a verification. This section also prescribes the information required to be included in the determination.

Penalties

Section 10.826 concerns the general application of penalties to BFTA transactions and is based on BFTA Article 5.9.

Goods Returned After Repair or Alteration

Section 10.827 implements BFTA Article 2.6 regarding duty treatment of goods re-entered after repair or alteration in Bahrain.

*Part 24*

A paragraph is added to § 24.23(c), which concerns the merchandise processing fee (MPF) to implement § 203 of the Act, providing that the MPF is not applicable to goods that qualify as originating goods as provided for under § 202 of the Act.

*Part 102*

Part 102 contains regulations regarding the rules for determining the country of origin of imported goods for various purposes. Section 102.0, which sets forth the scope of Part 102, is amended to notify readers that the rules of §§ 102.1 through 102.21 will be used for purposes of determining whether a good is considered a new and different article of commerce under the BFTA.

*Part 162*

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional BFTA records maintenance and examination provisions contained in new Subpart N, Part 10, CBP regulations.

*Part 163*

A conforming amendment is made to § 163.1 to include the maintenance of any documentation that the importer may have in support of a claim for preference under the BFTA as an activity for which records must be maintained. Also, the list or records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) list)) is also amended to add the BFTA records that the importer may have in support of a BFTA claim for preferential tariff treatment.

*Part 178*

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for a tariff preference or other rights or benefits under the BFTA and the Act.

**Inapplicability of Notice and Delayed Effective Date Requirements**

Under section 553 of the Administrative Procedure Act (''APA'') (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to an agency rulemaking that involves the foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States, as they implement preferential tariff treatment and related provisions of the BFTA. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider all comments it receives before issuing a final rule.

**Executive Order 12866 and Regulatory Flexibility Act**

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

**Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0130.

The collections of information in these regulations are in §§ 10.803, 10.804, 10.818, and 10.821. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the BFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the BFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

*Estimated total annual reporting burden:* 100 hours.

*Estimated average annual burden per respondent:* 12 minutes.

*Estimated number of respondents:* 500.

*Estimated annual frequency of responses:* 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

**Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

**List of Subjects**

*19 CFR Part 10*

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

*19 CFR Part 24*

Financial and accounting procedures.

*19 CFR Part 102*

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

*19 CFR Part 162*

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

*19 CFR Part 163*

Administrative practice and procedure, Customs duties and inspection, Export, Import, Reporting and recordkeeping requirements, Trade agreements.

*19 CFR Part 178*

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

**Amendments to the CBP Regulations**

■ Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for Part 10 continues to read, and the specific authority for new Subpart N is added to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.801 through 10.829 also issued under 19 U.S.C. 1202 (General Note 30, HTSUS) and Pub. L. 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note).

■ 2. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

**§ 10.31 Entry; bond.**

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Chile, Singapore, Morocco, or Bahrain and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 12, 25, 26, 27 and 30, HTSUS, in the country of which the importer is a resident.

* * * * *

■ 3. Part 10, CBP regulations, is amended by adding Subpart N to read as follows:

**Subpart N—United States-Bahrain Free Trade Agreement**

**General Provisions**

Sec.
10.801 Scope.
10.802 General definitions.

**Import Requirements**

10.803 Filing of claim for preferential tariff treatment upon importation.
10.804 Declaration.
10.805 Importer obligations.
10.806 Declaration not required.
10.807 Maintenance of records.
10.808 Effect of noncompliance; failure to provide documentation regarding transshipment.

**Rules of Origin**

10.809 Definitions.
10.810 Originating goods.
10.811 Textile or apparel goods.
10.812 Accumulation.
10.813 Value of materials.
10.814 Direct costs of processing operations.
10.815 Packaging and packing materials and containers for retail sale and for shipment.
10.816 Indirect materials.
10.817 Imported directly.

## Subpart N—United States-Bahrain Free Trade Agreement

### General Provisions

#### § 10.801 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Bahrain Free Trade Agreement (the BFTA) signed on September 14, 2004, and under the United States-Bahrain Free Trade Agreement Implementation Act (the Act; 119 Stat. 3581). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the BFTA and the Act are contained in Parts 24, 102, 162, and 163 of this chapter.

#### § 10.802 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim of origin.* ''Claim of origin'' means a claim that a good is an originating good or a good of a Party;

(b) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the BFTA to an originating good or other good specified in the BFTA, and to an exemption from the merchandise processing fee;

(c) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(d) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Days.* ''Days'' means calendar days;

(f) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(g) *Foreign material.* ''Foreign material'' means a material other than a material produced in the territory of one or both of the Parties;

(h) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(i) *Good.* ''Good'' means any merchandise, product, article, or material;

(j) *Harmonized System.* ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Originating.* ''Originating'' means a good qualifying under the rules of origin set forth in General Note 30, HTSUS, and BFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(n) *Party.* ''Party'' means the United States or the Kingdom of Bahrain;

(o) *Person.* ''Person'' means a natural person or an enterprise;

(p) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable under the BFTA to an originating good and an exemption from the merchandise processing fee;

(q) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(r) *Textile or apparel good.* ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(s) *Territory.* ''Territory'' means:

(1) With respect to Bahrain, the territory of Bahrain as well as the maritime areas, seabed, and subsoil over which Bahrain exercises, in accordance with international law, sovereignty, sovereign rights, and jurisdiction; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(t) *WTO Agreement.* ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

### Import Requirements

#### § 10.803 Filing of claim for preferential tariff treatment upon importation.

An importer may make a claim for BFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol ''BH'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

#### § 10.804 Declaration.

(a) *Contents.* An importer who claims preferential tariff treatment for a good under the BFTA must submit to CBP, at the request of the port director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to

any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 30(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 30(h), HTSUS;

(3) Must include a statement, in substantially the following form:

''I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Bahrain Free Trade Agreement; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent.* The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The declaration must be completed in the English language.

(d) *Applicability of declaration.* The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

### § 10.805 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.803 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the BFTA:

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.804 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

### § 10.806 Declaration not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.804 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the BFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

### § 10.807 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under § 10.803 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under Part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

### § 10.808 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.804 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* § 10.817 of this subpart).

**Rules of Origin**

**§ 10.809 Definitions.**

For purposes of §§ 10.809 through 10.817:

(a) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good.* ''Good'' means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties.* ''Goods wholly the growth, product, or manufacture of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(5) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer.* Importer means a person who imports goods into the territory of a Party;

(f) *Indirect material.* ''Indirect material'' means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material.* ''Material'' means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties.* ''Material produced in the territory of one or both of the Parties'' means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce.* A ''new or different article of commerce'' exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§ 102.1 through 102.21 of this chapter;

(j) *Non-originating material.* ''Non-originating material'' means a material that does not qualify as originating under this subpart or General Note 30, HTSUS;

(k) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good.* ''Remanufactured good'' means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations.* ''Simple combining or packaging operations'' means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or packing or repacking components together.

**§ 10.810 Originating goods.**

(a) *General.* A good will be considered an originating good under the BFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in § 10.809(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 30(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 30(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 30(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 30(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 30, HTSUS.

(b) *Value-content requirement.* A good described in paragraph (a)(2) of this section will be considered an originating good under the BFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations.* For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

**§ 10.811 Textile or apparel goods.**

(a) *De minimis.*—(1) *General.* Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the BFTA because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 30(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers is not more than seven percent of the total weight of that component.

(2) *Exception.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 30(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the BFTA unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the appraised value of the set.

**§ 10.812 Accumulation.**

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.810 of this subpart and all other applicable requirements of General Note 30, HTSUS.

**§ 10.813 Value of materials.**

(a) *General.* For purposes of § 10.810(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

(1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(2) A reasonable amount for profit; and

(3) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

**§ 10.814 Direct costs of processing operations.**

(a) *Items included.* For purposes of § 10.810(b) of this subpart, the words ''direct costs of processing operations'', with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

(1) All actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel;

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of § 10.810(b) of this subpart, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

**§ 10.815 Packaging and packing materials and containers for retail sale and for shipment.**

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under § 10.810 of this subpart and General Note 30, HTSUS, except to the extent that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in § 10.810(b) of this subpart.

**§ 10.816 Indirect materials.**

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under § 10.810 of this subpart and General Note 30, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in § 10.810(b) of this subpart.

**§ 10.817 Imported directly.**

(a) *General.* To qualify as an originating good under the BFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good:

(i) Remained under the control of the customs authority of the non-Party; and

(ii) Did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the BFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

**Tariff Preference Level**

**§ 10.818 Filing of claim for tariff preference level.**

A fabric, apparel, or made-up good described in § 10.819 of this subpart that does not qualify as an originating good under § 10.810 of this subpart may nevertheless be entitled to preferential tariff treatment under the BFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9914.99.20) immediately above the applicable subheading in Chapter 52 through Chapter 63 of the HTSUS under which each non-originating fabric or apparel good is classified.

**§ 10.819 Goods eligible for tariff preference claims.**

The following goods are eligible for a TPL claim filed under § 10.818 of this subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XIV, Chapter 99, HTSUS):

(a) Cotton or man-made fiber fabric goods provided for in Chapters 52, 54, 55, 58, and 60 of the HTSUS that are wholly formed in the territory of Bahrain from yarn produced or obtained outside the territory of Bahrain or the United States;

(b) Cotton or man-made fiber fabric goods provided for in subheadings 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34, 5801.35, 5801.36, 5802.11, 5802.19, 5802.20, 5802.30, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30, 5805.00.30, 5805.00.40, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.20, 5807.90.05, 5807.90.20, 5808.10.40, 5808.10.70, 5808.90, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, and 6006.44 of the HTSUS that are wholly formed in the territory of Bahrain from yarn spun in the territory of Bahrain or the United States from fiber produced or obtained outside the territory of Bahrain or the United States;

(c) Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain from fabric or yarn produced or obtained outside the territory of Bahrain or the United States; and

(d) Cotton or man-made fiber made-up goods provided for in Chapter 63 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain from fabric wholly formed in Bahrain or the United States from yarn produced or obtained outside the territory of Bahrain or the United States.

**§ 10.820 Certificate of eligibility.**

Upon request, an importer claiming preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.819 of this subpart must submit to CBP a certificate of eligibility. The certificate of eligibility must be completed and signed by an authorized official of the Government of Bahrain and must be in the possession of the importer at the time the preferential tariff treatment is claimed.

**§ 10.821 Declaration.**

(a) *General.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.819 of this subpart must submit, at the request of the port director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

(1) A description of the good, quantity, invoice numbers, and bills of lading;

(2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;

(3) A reference to the specific provision in § 10.819 of this subpart that forms the basis for the claim for preferential tariff treatment; and

(4) A statement as to any fiber, yarn, or fabric of a non-Party and the origin of such materials used in the production of the good.

(b) *Retention of records.* An importer must retain all documents relied upon to prepare the declaration for a period of five years.

**§ 10.822 Transshipment of non-originating fabric or apparel goods.**

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other

Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good:

(i) Remained under the control of the customs authority of the non-Party; and

(ii) Did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or other aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that terms is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

**§ 10.823 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.**

(a) *General.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in § 10.822 of this subpart were met.

**Origin Verifications and Determinations**

**§ 10.824 Verification and justification of claim for preferential treatment.**

(a) *Verification.* A claim for preferential treatment made under § 10.803 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

**§ 10.825 Issuance of negative origin determinations.**

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.803 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 30, HTSUS, and in §§ 10.809 through 10.817 of this subpart, the legal basis for the determination.

**Penalties**

**§ 10.826 Violations relating to the BFTA.**

All criminal, civil, or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the BFTA.

**Goods Returned After Repair or Alteration**

**§ 10.827 Goods re-entered after repair or alteration in Bahrain.**

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Bahrain as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Bahrain, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Bahrain, are incomplete for their intended use and for which the processing operation performed in Bahrain constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Bahrain after having been exported for repairs or alterations and which are claimed to be duty free.

## PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 4. The general authority citation for Part 24 and the specific authority for § 24.23 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

■ 5. Section 24.23 is amended by adding a new paragraph (c)(8) to read as follows:

**§ 24.23 Fees for processing merchandise.**

* * * * *

(c) * * *

(8) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States-Bahrain Free Trade Agreement Implementation Act (see also General Note 30, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after August 1, 2006.

* * * * *

## PART 102—RULES OF ORIGIN

■ 6. The authority citation for Part 102 is revised to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

■ 7. Section 102.0 is amended by adding, after the second sentence, a new sentence to read as follows:

**§ 102.0 Scope.**

* * * The rules set forth in §§ 102.1 through 102.21 of this Part will also apply for purposes of determining whether an imported good is a new or different article of commerce under § 10.809 of the United States-Bahrain Free Trade Agreement regulations.

* * *

## PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 8. The authority citation for Part 162 continues to read in part as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

■ 9. Section 162.0 is amended by revising the last sentence to read as follows:

**§ 162.0 Scope.**

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the U.S.-Morocco Free Trade Agreement, and the U.S.-Bahrain Free Trade Agreement are contained in Part 10, Subparts H, I, M, and N of this chapter, respectively.

## PART 163—RECORDKEEPING

■ 10. The authority citation for Part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 11. Section 163.1(a)(2) is amended by redesignating paragraph (a)(2)(x) as paragraph (a)(2)(xi) and adding a new paragraph (a)(2)(x) to read as follows:

**§ 163.1 Definitions.**

* * *

(a) Records—* * *

(2) Activities * * *

(x) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Bahrain Free Trade Agreement (BFTA), including a BFTA importer's declaration.

* * * * *

■ 12. The Appendix to Part 163 is amended by adding new listings under section IV in numerical order to read as follows:

**Appendix to Part 163—Interim (a)(1)(A) List**

* * * * *

IV. * * *

**§ 10.805 BFTA records that the importer may have in support of a BFTA claim for preferential tariff treatment, including an importer's declaration.**

**§ 10.820 BFTA TPL certificate of eligibility.**

**§ 10.821 BFTA TPL declaration.**

* * * * *

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 13. The authority citation for Part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 14. Section 178.2 is amended by adding new listings ''§§ 10.803,10.804, 10.818, and 10.821'' to the table in numerical order to read as follows:

**§ 178.2 Listing of OMB control numbers.**

| 19 CFR section | Description | OMB control No. |
|---|---|---|
| * | * | * |
| §§ 10.803,10.804,10.818, and 10.821 | Claim for preferential tariff treatment under the U.S.-Bahrain Free Trade Agreement. | 1651–0130 |
| * | * | * |

* * * * *

**W. Ralph Basham,**

*Commissioner, U.S. Customs and Border Protection.*

Approved: October 9, 2007.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 07–5062 Filed 10–15–07; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD09–07–123]**

**RIN 1625–AA00**

## Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Navy Pier East Safety Zone in Chicago Harbor on October 15, 2007. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will temporarily restrict vessel traffic from a portion of Chicago Harbor.

**DATES:** The regulations in 33 CFR 165.933 will be enforced from 8 p.m. to 10 p.m. on October 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Navy Pier East Safety Zone in Chicago Harbor, Chicago,

IL, in 33 CFR 165.933, for the *Experian Event* on October 15, 2007 from 8 p.m. to 10 p.m. These regulations can be found in the June 13, 2007 issue of the **Federal Register** (72 FR 32524).

All vessels must obtain permission from the Captain of the Port or his on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders and directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.933 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners.

The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of this safety zone is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM.

Dated: September 24, 2007.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E7–20309 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–RO5–OAR–2005–OH–0005; FRL–8464–6]**

### Approval and Promulgation of Implementation Plans; Ohio Particulate Matter

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting final approval of Ohio rules concerning equivalent visible emission limits (EVELs), i.e., alternate opacity limits that may be established for stack sources that meet mass emission limits but cannot meet standard opacity limits. Ohio's rules provide criteria for establishment of EVELs, and the rules provide that EVELs established according to these criteria take effect without formal review by EPA. Ohio submitted these rules on July 18, 2000, and EPA published notices of proposed rulemaking on December 2, 2002, and on January 23, 2007, that proposed to approve these rules. EPA received one adverse comment letter. EPA will honor the commenter's recommendation to fully codify the effects of this action, but EPA does not agree that further notice and opportunity for comment is necessary. As a result of this action, previous State modifications to EVELs will become effective at the Federal level on November 15, 2007. Similarly, any future action by the State to establish, modify, or rescind EVELs in accordance with the criteria given in these Ohio rules, as approved, will become effective at the federal level immediately upon the effective date of the State action.

**DATES:** This final rule is effective on November 15, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2005–OH–0005. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:



#### I. What Did EPA Propose?

On July 18, 2000, Ohio submitted and requested approval of numerous particulate matter rules. On December 2, 2002, at 67 FR 71515, EPA proposed to approve many of these rules, including provisions in Ohio Administrative Code (OAC) 3745–17–07(C) relating to EVELs. (On August 9, 2005, at 70 FR 46127, EPA proposed to approve most of the remainder of the rules that Ohio had submitted.) These provisions on EVELs established procedures and criteria by which sources meeting applicable particulate mass emission limits but unable to meet applicable opacity limits could justify a visible emission limit that is ''equivalent'' in stringency to the mass emission limit. Ohio's rules provide further that EVELs established according to the rules' procedures and criteria immediately modify the federally enforceable opacity limits without requirement for review as a revision to the State Implementation Plan (SIP).

Most States' rules provide no detailed criteria for establishing EVELs. In these situations, EPA requires that any EVEL that the State wishes to adopt must be submitted to EPA for review, and the EVEL does not alter the federally enforceable opacity limits unless and until EPA approves the EVEL.

Ohio sought to apply a different process for establishing, modifying, and rescinding EVELs. Ohio adopted detailed procedures and criteria by which it would determine whether and at what level it would establish EVELs. EPA proposed to find that those procedures and criteria are appropriate and replicable, i.e., that an EPA review of appropriate opacity limits for particular facilities would follow the same procedures and criteria and would reach the same conclusion as Ohio. Under these circumstances, EPA proposed to find federal review of the actions that Ohio takes to establish, modify, or rescind EVELs to be unnecessary. As a result, EPA proposed in effect to delegate responsibility to Ohio for managing the subset of EVELs within the set of federally enforceable opacity limits for sources in Ohio.

EPA approved most of the Ohio rules on November 8, 2006, at 71 FR 65417. However, EPA did not approve Ohio's rules regarding EVELs in that rulemaking. Instead, on January 23, 2007, at 72 FR 2823, EPA re-proposed action on the rules regarding EVELs. EPA published this re-proposal for purposes of clarifying and soliciting comments on the treatment of historic EVELs that were previously approved into the State Implementation Plan (SIP).

Under the approach that EPA proposed to approve, Ohio may take several actions on EVELs. Ohio may

rescind a previously established EVEL, thereby reestablishing applicability of Ohio's general opacity limits. Ohio may modify a previously established EVEL. Ohio may establish a new EVEL. In each case, Ohio is to examine opacity values during qualifying stack tests showing compliance with mass emission limits, and then Ohio is to establish the indicated opacity limits that may or may not reflect an EVEL, as appropriate.

The key question addressed in EPA's notice of re-proposed rulemaking was the timing by which EVEL actions taken by Ohio come into effect at the federal level. For future actions, EPA proposed that the federally enforceable limit would reflect the opacity limits adopted by the State (with or without an EVEL) at the same time that Ohio establishes the limits. For past actions altering opacity limits, EPA proposed that the State's actions would alter the federally enforceable opacity limits upon the effective date of final federal rulemaking on the EVEL rules. That is, EPA proposed that, starting on the effective date of EPA's final rulemaking on OAC 3745–17–07(C), the federally enforceable opacity limits shall exactly match the opacity limits in place in Ohio at any given time, including only those EVELs that Ohio has in place pursuant to OAC 3745–17–07(C).

EPA's notice of re-proposed rulemaking specifically addressed situations in which EPA had previously approved EVELs into the SIP. EPA proposed to rescind the previously issued EVELs (to the extent that they are still effective at the Federal level), thereby providing clarity that the applicable federally enforceable opacity limit for any source is the currently effective limit that Ohio has established pursuant to OAC 3745–17–07(C) and not the previously SIP-approved limit. EPA proposed that the limits in these EVELs (to the extent they remain in effect) would remain in effect if and only if the limits remained in effect at the State level. EPA proposed that if Ohio has established changed limits pursuant to OAC 3745–17–07(C), the limits applicable to the affected sources would be changed (the EVEL either rescinded or modified) as of the effective date of EPA's final rulemaking on Ohio's rules. Similarly, any future State change in opacity limits for these sources pursuant to OAC 3745–17–07(C) would also yield an immediate corresponding change in the federally enforceable opacity limit, again without regard to the previous approval of an EVEL into the SIP.

## II. What Is EPA's Response to Comments?

EPA received one comment letter regarding the proposed rule, comments submitted by Katerina Milenkovski of Porter Wright Morris & Arthur on behalf of FirstEnergy. EPA approved an EVEL for FirstEnergy's Bay Shore facility near Toledo, codified at 40 CFR 52.1870(c)(58), approved on November 2, 1983 at 48 FR 50530. FirstEnergy objects on procedural grounds to EPA's proposal to rescind EVELs such as this, and FirstEnergy objects to EPA's proposal to eliminate existing EVELs such as the EVEL for its Bay Shore facility without explicitly codifying the change for each affected facility. The following discussion describes FirstEnergy's comments in more detail and provides EPA's evaluation of and response to the comments.

*Comment:* FirstEnergy describes EPA's proposed action as having ''two parts-one prospective and one retroactive. FirstEnergy has no objection to the prospective portion of the proposal which provides that, once EPA's proposed approval of OAC 3745–17–07(C) is final, any EVELs issued pursuant to it will be automatically federally enforceable and will not require separate federal review. However, FirstEnergy objects to EPA's proposal to eliminate all other EVELs-some identified and some not-that have been historically approved by EPA in the Ohio SIP.''

*Response:* In fact, OAC 3745–17–07(C) does not have separable provisions for ''prospective'' versus ''retroactive'' revisions to opacity limits. OAC 3745–17–07(C) provides procedures and criteria for determining whether an EVEL is warranted and if so at what level. The procedures and criteria in OAC 3745–17–07(C) provide for periodic review of opacity limits without regard to whether an EVEL was issued in the past or whether an EVEL was approved into the SIP. Once Ohio makes its determination regarding the justification for and level of any EVEL, and once Ohio establishes the warranted opacity limits (with or without an EVEL), OAC 3745–17–07(C) provides that these opacity limits become the federally enforceable opacity limits without EPA SIP review.

FirstEnergy does not specify a recommended EPA rulemaking action. Nevertheless, FirstEnergy's comment implies a recommendation that EPA approve OAC 3745–17–07(C) for one set of circumstances (facilities with no SIP-approved EVEL) and disapprove the rule for another set of circumstances (facilities with a SIP-approved EVEL). Since OAC 3745–17–07(C) does not differentiate between EVELs that have been approved into the SIP and EVELs that have not, EPA does not have the authority to rulemake in this manner. (As discussed below, EPA also believes that such a rulemaking would not be warranted.)

The central question EPA faced is when to change federally enforceable opacity limits once Ohio finds that revisions to opacity limits under OAC 3745–17–07(C) are warranted. Previously, in the absence of specific procedures and criteria that can be expected to yield appropriate and replicable limits, EPA had required that federally enforceable limits not change without EPA review following SIP review procedures. Now that Ohio has incorporated appropriate procedures and criteria into OAC 3745–17–07(C), EPA believes that opacity limit revisions that Ohio finds warranted should take effect at the Federal level as well, without further EPA review. Specifically, EPA believes that future Ohio actions on EVELs should take effect simultaneously at the State and Federal levels, and that past Ohio actions should take effect at the Federal level as soon as final EPA action (being taken here) becomes effective (i.e., November 15, 2007).

*Comment:* FirstEnergy objects to EPA's proposal ''to delete EVELs that are currently part of the SIP without identifying those EVELs or the facilities in question, and without providing a rationale or explanation for doing so.''

*Response:* FirstEnergy appears to misunderstand the nature of EPA's proposed action and the rationale that EPA provided for this proposed action. Ohio requested that EPA approve a rule that would change the process by which EVELs are established, modified, and rescinded. The new process would require that Ohio review opacity values and set opacity limits according to specified criteria and would remove the current requirement for EPA to conduct formal SIP review of the opacity limits that Ohio sets. EPA's proposed rulemaking thus evaluated the revised process and provided EPA's rationale for its belief that the revised process assures that Ohio will set appropriate opacity limits without the need for formal EPA review of Ohio's actions.

EPA's proposed rulemaking did not address the merits of particular opacity limits at particular facilities. Indeed, Ohio has requested that EPA approve a process in which formal EPA review of the merits of particular opacity limits at particular facilities is no longer necessary. The acceptability of Ohio's requested process is a function of the

adequacy of the criteria to establish a replicable set of limits, the adequacy of the criteria to establish limits that are reliably consistent with EPA policy on EVELs, and the adequacy of the process to meet procedural requirements. The acceptability of Ohio's requested process is not a function of what particular opacity limits are appropriate at particular facilities.

As a point of clarification, elimination of EVELs from the SIP does not necessarily mean that the relevant facilities are no longer subject to EVELs. If Ohio has retained an EVEL or re-established an EVEL identical to the EVEL in the SIP, then no changes in opacity limits would apply to such facility. EPA is accepting Ohio's determinations as to whether and at what level any EVEL is warranted for any particular source, and EPA is eliminating EVELs in the SIP to avoid confusion and to assure that the opacity limits set by the State (with or without an EVEL) unambiguously represent the federally enforceable opacity limits.

For this rulemaking, as for many rulemakings, EPA need not identify the affected facilities to explain the basis for its action. An illustrative example here is the rulemaking on the other rules that Ohio submitted along with OAC 3745–17–07(C). (See the final rule on November 8, 2006, at 71 FR 65417, and the proposed rules on December 2, 2002, and August 9, 2005, at 67 FR 71515 and 70 FR 46127, respectively.) For example, part of that rulemaking addressed storage pile opacity limits at several Ohio utility plants. EPA addressed these limits on the basis of general properties of storage piles, not on the properties of specific facilities. Therefore, EPA did not identify the facilities affected by this rulemaking, and EPA had no need to identify these facilities.

*Comment:* FirstEnergy believes that EPA failed to provide proper notice and opportunity for comment on this revision. FirstEnergy comments that EPA was proposing ''a SIP revision, governed by Section 307(d) of the Clean Air Act, which requires that EPA's **Federal Register** notice 'shall be accompanied by a statement of its basis and purpose,' which shall include a summary of—(A) the factual data on which the proposed rule is based; (B) the methodology used in obtaining the data an in analyzing the data; and (C) the major legal interpretations and policy considerations underlying the proposed rule.''

*Response:* Even though EPA believes that section 307(d) of the Clean Air Act is not applicable to this SIP action, EPA for this action has provided the statement of basis and purpose described in section 307(d)(3). As discussed above, Ohio requested that EPA approve a revised process for setting opacity limits. The merits of Ohio's request process are independent of the merits of particular opacity limits at particular facilities, and EPA reviewed Ohio's request accordingly. Therefore, the basis and purpose that EPA specified for its proposed action by necessity did not address particular conditions at particular facilities, and EPA had no need to identify the affected facilities in order to approve the process.

EPA believes that it has provided the basis and purpose of its proposed action with sufficient particularity for interested parties to comment meaningfully. The notice of proposed rulemaking that EPA published on December 2, 2002 provides much of the rationale for concluding that OAC 3745–17–07(C) provides appropriate procedures and criteria for Ohio to take action on EVELs without further EPA review. The notice of proposed rulemaking published on January 23, 2007 supplements the earlier notice by clarifying the timing by which EVELs adopted by Ohio would take effect at a federal level.

FirstEnergy misinterprets the type of information that EPA must provide in its proposed rulemaking. In this rulemaking, the ''data'' underlying EPA's proposed rulemaking are procedural and programmatic data such as the criteria that Ohio would use and the related provisions of Ohio's rule and the criteria that are stated in EPA policies. The ''methodology'' used in obtaining and analyzing these procedural and programmatic data involved a comparison of the Ohio criteria against the criteria stated in EPA policies and a review of whether EPA had sufficient assurances that Ohio's process would yield appropriate opacity limits to be justified in finding formal SIP review of such opacity limits to be unnecessary. The policy considerations involve various features of EPA's policy on EVELs and the desirability of periodic review of EVELs, and the legal interpretations involve statutory provisions regarding the processing of revisions to SIPs. EPA believes that its proposed rulemaking provided all the necessary information of these types to offer the public an adequate opportunity for meaningful comment on EPA's proposed action.

Nevertheless, EPA views FirstEnergy's comments as requesting that EPA identify the affected facilities and the effect of this action that EPA anticipates for each facility. EPA has reviewed the SIP and consulted with Ohio, and EPA is providing the requested information here.

FirstEnergy is correct that EPA took action in 1983 that approved an EVEL for the Toledo Bay Shore facility, although this EVEL may have expired under the terms of the approved permit. The codification of this action did not explicitly note that the approved provisions included an EVEL. EPA believes that this facility is the only facility in Ohio for which EPA approved an EVEL without explicitly noting the EVEL in the Code of Federal Regulations. The current Title V permit for this facility includes no EVEL, indicating that Ohio has concluded in accordance with OAC 3745–17–07(C) that an EVEL is no longer warranted for this facility. The facility is instead subject at the state level to general opacity limits (20 percent opacity with exemptions), and today's action will ensure that federally enforceable opacity limits match the state limits. That is, regardless of whether the 29 percent opacity limits that EPA approved in 1983 (implicitly codified at 40 CFR 52.1870(c)(58)) have expired, today's action clarifies that the general opacity limits now apply, effective on November 15, 2007.

Other facilities for which EPA approved EVELs are those facilities explicitly identified in either paragraph (c)(62) or paragraph (c)(65) of 40 CFR 52.1870. According to Ohio, four of these facilities—Corning Glass, Chardon Rubber, Springview Center, and Packaging Corporation of America (subsequently called Caraustar Industries)—have shut down, so today's action to have federal opacity limits match state limits will have no effect on them. For one facility—a Denman Tire Corporation facility—Ohio has concluded that the EVEL approved into the SIP remains warranted. For this facility, strictly speaking, EPA is implementing Ohio's approved EVEL process by rescinding the old permit approved into the SIP (which may have expired under its terms) but effectively re-establishing the identical limit as part of a newer permit issued by Ohio. Today's action therefore has the effect of clarifying that the EVEL limits approved into the SIP for the Denman Tire facility are currently in effect.

Ohio also provided information regarding other EVELs that would become the federally enforceable opacity limits by virtue of today's action. Ohio identified four facilities for which Ohio issued EVELs that are no longer in effect. (Ohio rescinded the EVELs for three facilities and the fourth facility shut down.) Ohio concluded

that no facilities other than Denman Tire Corporation's facility presently have an EVEL issued by the State. Thus, EPA believes that FirstEnergy's Bay Shore facility is the only active facility for which a SIP-approved EVEL is clarified to be not in effect as a result of today's action, and Denman Tire Corporation will have the only federally enforceable EVEL (matching the level of the EVEL approved in 1985) at the effective date of this rulemaking.

Under the process submitted by Ohio, the merits of alternative opacity limits are evaluated by the State as it contemplates issuance of a permit or administrative order that would specify applicable opacity limits. In the case of FirstEnergy's Bay Shore plant, Ohio issued a preliminary proposed permit on February 19, 2004, that proposed to subject this facility to general opacity limits (i.e., limits that reflect no EVEL). FirstEnergy had the opportunity to comment at that time on whether an EVEL was warranted at this facility. Ohio considered comments it received and issued a final permit, again applying general opacity limits, on November 19, 2004. This case illustrates the fact that the process requested by Ohio provides suitable opportunity for comment on the merits of particular opacity limits at particular facilities during the State process for issuing opacity limits.

FirstEnergy evidently had adequate notice of EPA's proposed action, insofar as a law firm submitted comments on its behalf. FirstEnergy's Bay Shore facility is the only operating facility with an SIP-approved EVEL that clearly has no EVEL following today's action. This provides further evidence that EPA provided adequate notice and opportunity for comment on the proposed rulemaking.

*Comment:* FirstEnergy believes that ''elimination of [EVELs established through SIP approval] should be subject to the same process and the same scrutiny as their initial adoption.'' FirstEnergy notes that the past rulemaking that approved these EVELs provided a review of the basis and justification for approving these specific EVELs. FirstEnergy states that ''EPA must, at a minimum, provide an explanation of the change in facts and/or change in law'' that warrants changing the SIP by eliminating these EVELs. (FirstEnergy believes that EPA has found the SIP ''substantially inadequate''; this comment is addressed separately below.)

*Response:* Under OAC 3745–17–07(C), Ohio is to conduct a periodic review of opacity limits of Ohio sources. The review may suggest that either an increase or a decrease in opacity limits is warranted; in either case, due to the adequacy of the process being approved, EPA believes that the opacity limits that are shown to be warranted according to the procedures and criteria of OAC 3745–17–07(C) need not be reviewed by EPA as SIP revisions.

The periodic review of opacity limits is an important feature of Ohio's rule. Facilities can achieve varying opacity levels as control technology improves and as plant conditions change with time. EVELs often remain in the SIP longer than they are warranted, and Ohio's rule offers a procedure that facilitates periodic review to assure that opacity limits remain appropriate for current conditions. Indeed, this periodic review was an important advantage of OAC 3745–17–07(C) factoring into EPA's decision to approve this rule.

FirstEnergy seems to wish that an EVEL that EPA found warranted under conditions that applied over 20 years ago would be more difficult to rescind than an EVEL that Ohio might currently establish. In particular, FirstEnergy wishes for EPA to disallow rescission of EVELs that have been approved into the SIP unless the rescission undergoes full SIP review.

EPA does not agree with FirstEnergy's recommendation. EPA believes that Ohio's rule is appropriately designed with appropriate procedures regardless of whether or not an affected facility has a previously SIP-approved EVEL. Ohio's rule provides for a review based on current conditions at each facility, with Ohio establishing opacity limits that are currently appropriate without regard to whether different opacity limits may have been appropriate in the past. In cases like FirstEnergy's Bay Shore facility, where Ohio has determined that no EVEL is currently warranted, EPA believes that this change in opacity limits should reflect the same process (involving immediate effectiveness) as applies to any other Ohio EVEL review.

*Comment:* FirstEnergy believes that ''EPA must * * * provide an explanation of [the basis for finding] the current SIP 'substantially inadequate,' pursuant to Section 110(a)(2)(H)(ii) of the Clean Air Act. EPA must also follow the statutorily prescribed procedures for correcting substantially inadequate SIPs.''

*Response:* This rulemaking reflects no finding of the current SIP to be ''substantially inadequate.'' Ohio has requested that EPA approve a rule that would change the process for taking actions on EVELs in Ohio and that would alter the federally enforceable opacity limits according to determinations on EVELs that Ohio has made and will make. EPA is approving this rule.

*Comment:* FirstEnergy further objects to EPA's proposal to discontinue EVELs without explicitly modifying the text in the Code of Federal Regulations that identifies the EVELs as part of the SIP. A footnote to this comment identifies FirstEnergy's Bay Shore facility as having an EVEL that ''would be eliminated upon finalization of the proposed action but would still be reflected in the Ohio SIP.'' In FirstEnergy's view, with this approach, the Code of Federal Regulations ''would no longer accurately reflect the contents of the Ohio SIP and the SIP would be more confusing than ever.'' FirstEnergy concludes that if ''EPA is to eliminate EVELs as part of this rulemaking, EPA needs to identify those EVELs in its proposed rulemaking with specificity and, if the proposal is finalized, EPA needs to modify the text of the CFR accordingly.''

*Response:* Upon review, EPA agrees to honor the commenter's recommendation that EPA modify the CFR for all EVELs that are currently in the SIP. To help implement the process being approved today, a process that provides that a source shall be subject to a federally enforceable EVEL if and only if Ohio has established a currently effective EVEL pursuant to OAC 3745–17–07(C), EPA is modifying the text of the CFR to remove EVELs that are explicitly or implicitly identified as part of the SIP. As proposed, EPA will rescind from the SIP paragraphs (c)(62) and (c)(65) of 40 CFR 52.1870, which currently name the only EVELs explicitly identified in the SIP. EPA will also amend the language of 40 CFR 52.1870(c)(58) to clarify that the EVELs that were included in the permit that EPA approved for FirstEnergy's Bay Shore facility are no longer part of the SIP. EPA believes that the SIP includes no other EVELs, so no other amendments to existing SIP language are necessary. At the effective date of this rulemaking, the Denman Tire Corporation facility will be subject to an EVEL by virtue of an EVEL being specified in the facility's Title V permit, and no other facilities will be subject to an EVEL.

## III. What Action Is EPA Taking Today?

EPA is approving OAC 3745–17–07(C) as submitted by Ohio on July 18, 2000. Under the procedures of this rule, a facility shall be subject to a federally enforceable EVEL if and only if the facility is subject to an EVEL that Ohio has established pursuant to OAC 3745–17–07(C). To implement this procedure, and to avoid potential for confusion regarding previously approved EVELs,

EPA is removing the previously approved EVELs from the SIP. Hereafter, EPA intends that federally enforceable EVELs will not be codified in the Code of Federal Regulations as part of the SIP but will instead be reflected only in the permit or other document that Ohio uses to establish the EVEL. Therefore, EPA is rescinding paragraphs (c)(62) and (c)(65) of 40 CFR 52.1870 and is adding language to 40 CFR 52.1870(c)(58) clarifying that the EVEL for FirstEnergy's Bay Shore facility is no longer part of the SIP. These revisions will help clarify that the federally enforceable opacity limits for a facility shall reflect only those EVELs that have been established by Ohio and are currently in effect in accordance with OAC 3745–17–07(C).

## IV. What Statutory and Executive Orders Apply?

*Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

*Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

*Regulatory Flexibility Act*

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

*National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: August 24, 2007.

**Richard C Karl,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart KK—Ohio

■ 2. Section 52.1870 is amended as follows:

■ a. By removing and reserving paragraphs (c)(62) and (c)(65).

■ b. By revising paragraphs (c)(58) and (c)(134) to read as follows:

**§ 52.1870 Identification of plan.**

* * * * *

(c) * * *

(58) On July 14, 1982, the State submitted revisions to its State Implementation Plan for TSP and SO2 for Toledo Edison Company's Bay Shore Station in Lucas County, Ohio, except that the equivalent visible emission limitations in this submittal are no longer in effect.

* * * * *

(134) On July 18, 2000, the Ohio Environmental Protection Agency submitted revised rules for particulate matter. Ohio adopted these revisions to address State-level appeals by various industry groups of rules that the State adopted in 1995 that EPA approved in 1996. The revisions provide reformulated limitations on fugitive emissions from storage piles and plant roadways, selected revisions to emission limits in the Cleveland area, provisions for Ohio to follow specified criteria to issue replicable equivalent visible emission limits, the correction of limits for stationary combustion engines, and requirements for continuous emissions monitoring as mandated by 40 CFR part 51, Appendix P. The State's submittal also included modeling to demonstrate that the revised Cleveland area emission limits continue to provide for attainment of the $PM_{10}$ standards. EPA is disapproving two paragraphs that would allow revision of limits applicable to Ford Motor Company's Cleveland Casting Plant through permit revisions without the full EPA review provided in the Clean Air Act.

(i) Incorporation by reference.

(A) The following rules in Ohio Administrative Code Chapter 3745–17 as effective January 31, 1998: Rule OAC 3745–17–01, entitled Definitions, Rule OAC 3745–17–03, entitled Measurement methods and procedures, Rule OAC 3745–17–04, entitled Compliance time schedules, Rule OAC 3745–17–07, entitled Control of visible particulate emissions from stationary sources, Rule OAC 3745–17–08, entitled Restriction of emission of fugitive dust, Rule OAC 3745–17–11, entitled Restrictions on particulate emissions from industrial processes, Rule OAC 3745–17–13, entitled Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson county, and OAC 3745–17–14, entitled Contingency plan requirements for Cuyahoga and Jefferson counties.

(B) Rule OAC 3745–17–12, entitled Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga county, as effective on January 31, 1998, except for paragraphs (I)(50) and (I)(51).

(C) Engineering Guide #13, as revised by Ohio EPA, Division of Air Pollution Control, on June 20, 1997.

(D) Engineering Guide #15, as revised by Ohio EPA, Division of Air Pollution Control, on June 20, 1997.

(ii) Additional material.

(A) Letter from Robert Hodanbosi, Chief of Ohio EPA's Division of Air Pollution Control, to EPA, dated February 12, 2003.

(B) Telefax from Tom Kalman, Ohio EPA, to EPA, dated January 7, 2004, providing supplemental documentation of emissions estimates for Ford's Cleveland Casting Plant.

(C) Memorandum from Tom Kalman, Ohio EPA to EPA, dated February 1, 2005, providing further supplemental documentation of emission estimates.

(D) E-mail from Bill Spires, Ohio EPA to EPA, dated April 21, 2005, providing further modeling analyses.

* * * * *

[FR Doc. E7–20253 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2007–0376; FRL–8477–4]**

### Approval of Implementation Plans of Illinois: Clean Air Interstate Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the Illinois State Implementation Plan (SIP) submitted on September 14, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA is determining that the SIP revision fully meets the CAIR requirements for Illinois. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide ($SO_2$), nitrogen oxides ($NO_X$) annual, and $NO_X$ ozone season emissions for Illinois. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006 and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of $SO_2$ and $NO_X$ that significantly contribute to, and interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates ($PM_{2.5}$) and/or ozone in any downwind state. CAIR establishes State budgets for $SO_2$ and $NO_X$ and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is approving, Illinois meets CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions.

**DATES:** This direct final rule will be effective December 17, 2007, unless EPA receives adverse comments by November 15, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0376, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov*.

3. *Fax:* (312) 886–5824.

4. *Mail:* ''EPA–R05–OAR–2007–0376'', John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery or Courier:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2007–0376. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* website is an

''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact John Summerhays, Environmental Scientist, at (312) 886–6067 to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, summerhays.john@epa.gov.

**SUPPLEMENTARY INFORMATION:**

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## I. What Actions Is EPA Taking?

EPA is approving a revision to the Illinois SIP, submitted in final form on September 14, 2007, reflecting rules adopted by Illinois on August 23, 2007. In its SIP revision, Illinois meets CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions. EPA has determined that the SIP meets the applicable requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue a final rule to withdraw the FIPs concerning $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions for Illinois. That action will remove and reserve 40 CFR 52.745 and 52.746. The withdrawal of the CAIR FIPs for Illinois is a conforming amendment that must be made once the SIP approval is effective because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Illinois. Once the SIP approval becomes effective, EPA no longer has authority for the FIPs. Thus, EPA will not have the option of maintaining the FIPs following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

## II. What is the Regulatory History of CAIR and the CAIR FIPs?

CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for $PM_{2.5}$ and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of $SO_2$, which is a precursor to $PM_{2.5}$ formation, and/or $NO_X$, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for $SO_2$ and annual State-wide emission reduction requirements for $NO_X$. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for $NO_X$ for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR $SO_2$, $NO_X$ annual, and $NO_X$ ozone season trading programs, as appropriate. The CAIR FIP $SO_2$, $NO_X$ annual, and $NO_X$ ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant ($SO_2$, $NO_X$ annual, and $NO_X$ ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP

provisions (e.g., the methodology for allocating $NO_X$ allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

**III. What are the General Requirements of CAIR and the CAIR FIPs?**

CAIR establishes State-wide emission budgets for $SO_2$ and $NO_X$ and is to be implemented in two phases. The first phase of $NO_X$ reductions starts in 2009 and continues through 2014, while the first phase of $SO_2$ reductions starts in 2010 and continues through 2014. The second phase of reductions for both $NO_X$ and $SO_2$ starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State $SO_2$ and $NO_X$ budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their $NO_X$ SIP Call trading programs in their CAIR $NO_X$ ozone season trading programs.

**IV. What Are the Types of CAIR SIP Submittals?**

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the $NO_X$ allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include $NO_X$ SIP Call trading sources that are not EGUs under CAIR in the CAIR $NO_X$ ozone season trading program;

2. Provide for State allocation of $NO_X$ annual or ozone season allowances using a methodology chosen by the State;

3. Provide for State allocation of $NO_X$ annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR $SO_2$, $NO_X$ annual, or $NO_X$ ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' $SO_2$, $NO_X$ annual, or $NO_X$ ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions.

**V. Description of Illinois' CAIR SIP Submittal**

*A. The Background of Illinois' Submittal*

On March 29, 2007, Illinois submitted draft rules and voluminous supporting material for addressing CAIR requirements. These rules had been proposed by the Illinois Environmental Protection Agency (Illinois EPA) to the Illinois Pollution Control Board (IPCB) on May 30, 2006. (IPCB is the board responsible for adopting environmental regulations in Illinois.) The IPCB held hearings on these proposed rules on October 10 through October 12, 2006, and again on November 28 and November 29, 2006. Following these hearings and following discussions with interested parties, the Illinois EPA recommended a revised set of rules to the IPCB on January 5, 2007. These rules constitute the regulatory portion of the submittal by Illinois on March 29, 2007. In addition to the rules, Illinois' March 2007 submittal included voluminous supporting material used in the state rulemaking process to support the rules. This material included such documents as transcripts of hearings and Alternative Control Techniques documents describing $NO_X$ control options. IPCB then solicited further comment on refined versions of the rules. On June 29, 2007, Illinois EPA submitted comments on the ''first notice'' rules to EPA, including recommended rule language.

IPCB adopted final rules on August 23, 2007, effective August 31, 2007. IPCB makes the full set of relevant documents, including the final rules, available on its Web site, either by accessing *http://www.ipcb.state.il.us/* and selecting docket R2006–026 or by directly accessing *http://www.ipcb.state.il.us/cool/external/CaseView2.asp?referer=coolsearch&case=R2006–026.*

Illinois EPA submitted the final rules by a submittal postmarked September 14, 2007. Although the submittal letter was undated, EPA considers this package to have been submitted on the postmark date, i.e., September 14, 2007. This submittal also included interim draft rules and other materials developed during the IPCB rulemaking process after March 2007. The focus of EPA's rulemaking is on whether the final rules that Illinois adopted would satisfy EPA's requirements under CAIR.

*B. Summary of Illinois' Rules*

Part 225 of Title 35 of the Illinois Administrative Code, entitled ''Control Of Emissions From Large Combustion Sources,'' includes numerous provisions addressing utility emissions of $SO_2$, $NO_X$, and mercury. These rules are designed to address the requirements of both the CAIR and the Clean Air Mercury Rule (CAMR). Today's action addresses the CAIR portions of the Part 225 rules.

Part 225 includes six subparts: Subpart A, entitled ''General Provisions,'' Subpart B, entitled ''Control Of Mercury Emissions From Coal-Fired Electric Generating Units,'' Subpart C, entitled ''CAIR $SO_2$ Trading Program,'' Subpart D, entitled ''CAIR $NO_X$ Annual Trading Program,'' Subpart E, entitled ''CAIR $NO_X$ Ozone Season Trading Program, and Subpart F, entitled ''Combined Pollutant Standards.'' The CAIR provisions are

addressed in subparts A, C, D, and E. Subpart B, which addresses mercury, was not included in Illinois' submittal and was submitted separately. Subpart F was included in Illinois' September 2007 submittal but may be considered a part of Illinois' mercury plan; EPA will address Subpart F as part of EPA's separate rulemaking addressing Illinois' mercury rules.

Subpart A contains general provisions, most notably including definitions and incorporation by reference. The definitions reflect the definitions given in the CAIR model rules and are included for terms that are used in Illinois' rules. (Although some definitions are pertinent to the regulation of mercury, today's action only addresses the adequacy of these definitions for CAIR purposes. Separate rulemaking will address the adequacy of these definitions for mercury regulation purposes.) The incorporation by reference incorporates almost the entirety of the CAIR model rules. With respect to the $SO_2$ program in 40 CFR part 96, Illinois' rules incorporate subpart AAA (CAIR $SO_2$ Trading Program General Provisions); 40 CFR part 96, subpart BBB (CAIR Designated Representative for CAIR $SO_2$ Sources); 40 CFR part 96, subpart FFF (CAIR $SO_2$ Allowance Tracking System); 40 CFR part 96, subpart GGG (CAIR $SO_2$ Allowance Transfers); and 40 CFR part 96, subpart HHH (Monitoring and Reporting), with two exceptions. Illinois does not incorporate 40 CFR 96.204 (entitled ''Applicability''), and 96.206 (entitled ''Standard requirements''). For these two sections, Illinois instead has adopted language that is effectively identical to the language in EPA's model rule. Illinois also has adopted language addressing permitting requirements instead of incorporating subpart CCC by reference, and Illinois does not provide for opt-ins and therefore neither incorporates subpart III by reference nor adopts any similar state language. Illinois' incorporation by reference for the ozone season $NO_X$ program and for the annual $NO_X$ program closely parallels the incorporation by reference for the $SO_2$ program. EPA's model rules for $NO_X$, unlike the model rules for $SO_2$, have allowance allocation provisions (in 40 CFR part 96, subparts E and EE, respectively, and in related provisions in 40 CFR 96.105(b)(2) and 96.305(b)(2)). However, Illinois did not incorporate these allocation provisions by reference and instead adopted its own provisions.

Subpart C of Illinois' rule addresses the $SO_2$ requirements of CAIR. This subpart includes six sections, entitled, ''Purpose,'' ''Applicability,'' ''Compliance Requirements,'' ''Appeal Procedures,'' ''Permit Requirements,'' and ''Trading Program'' respectively. The purpose is to regulate $SO_2$ emissions in accordance with EPA's CAIR requirements. The requirements apply in general to boilers and combustion turbines that serve generators with capacity to produce greater than 25 megawatts, with an exemption for some cogeneration units and solid waste incineration units. Units subject to these rules must comply with allowance holding requirements and emissions monitoring requirements incorporated by reference from 40 CFR part 96. Procedures for appealing EPA decisions in the $SO_2$ trading program are the procedures given in 40 CFR part 78. Owners or operators of units subject to the program must apply for a permit that will specify the requirements under the program that will apply to the source. Allowance allocations are the allocations determined in the Acid Rain Program under title IV of the CAA. After the end of each year starting with 2010, allowances held by a source are deducted to cover the source's emissions, according to retirement ratios that EPA has mandated.

Subpart D of Illinois' rules addresses the $NO_X$ annual trading program of the CAIR. The sections described above in Subpart C (Illinois' $SO_2$ program rules) are also present in Subpart D, using nearly identical language. In addition, Subpart D includes extensive sections addressing allowance allocations. Unlike the $SO_2$ program, which relies on allowances issued under the Acid Rain Program, the annual $NO_X$ program relies on newly issued allowances. EPA gives states substantial flexibility in the allocation of $NO_X$ allowances so long as the total number of allowances allocated is within the state's budget that EPA has established and so long as certain timing requirements concerning the determination and submission to the Administrator of allocations are met. Section VI.D below describes Illinois' $NO_X$ allowance allocation systems in more detail.

Subpart E of Illinois' rules address the $NO_X$ ozone season trading program. These rules are again quite similar to the rules in Subparts C and D (for the $SO_2$ and the annual $NO_X$ trading programs, respectively), including rules providing for allowance allocations that are quite similar to the provisions in Subpart D. Again, this allocation system is described in more detail in section VI.D below.

The CAIR $NO_X$ ozone season program is designed to replace the program known as the $NO_X$ SIP Call trading program. Therefore, a state like Illinois that is subject to both sets of requirements must adopt CAIR rules that suitably replace the state's $NO_X$ SIP Call trading program rules. Most notably, the state must adopt control measures that will achieve the amount of $NO_X$ emission reductions that were projected to be achieved by sources that were covered by the $NO_X$ SIP Call trading program but that are not covered by the CAIR $NO_X$ ozone season trading program. In addition, such states must address several transition issues such as the status of allowances issued under the $NO_X$ SIP Call that remain in circulation after the $NO_X$ SIP Call ends.

Illinois' CAIR submittal does not fully address the replacement of the $NO_X$ SIP Call. Illinois' CAIR $NO_X$ ozone season trading program addresses the emissions from EGUs and do not address emissions from non-EGUs that are covered by the $NO_X$ SIP Call trading program. Non-EGUs in Illinois will thus not be part of the CAIR $NO_X$ ozone season trading program. Illinois is instead pursuing ''reasonably available control technology (RACT) rules'' that would subject the non-EGUs to specific emission limits. Illinois' rules also do not fully address the issues relating to transition from the $NO_X$ SIP Call program to the CAIR program.

## VI. Analysis of Illinois' CAIR SIP Submittal

### *A. State Budgets for Allowance Allocations*

The CAIR $NO_X$ annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional $NO_X$ budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State $NO_X$ annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State $SO_2$ budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program. Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.50 ton of $SO_2$ emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of $SO_2$ emissions in the CAIR trading program.

In today's action, EPA is approving Illinois' SIP revision that adopts the

$NO_X$ budgets and conforms with the $SO_2$ budgets established for the State in CAIR. For $NO_X$ annual emissions, these budgets are 76,230 tons for each year from 2009 to 2014 and 63,525 tons for each year thereafter. For $NO_X$ ozone season emissions these budgets are 30,701 for each year from 2009 to 2014 and 28,981 tons for each year thereafter. For $SO_2$, Illinois' rules provide for retirement ratios that, in concert with the number of allowances that EPA will issue under the Acid Rain Program, will reflect the budgets of 192,671 tons for each year from 2010 to 2014 and 134,869 tons for each year thereafter.

*B. CAIR Cap-and-Trade Programs*

The CAIR $NO_X$ annual and ozone-season model trading rules both largely mirror the structure of the $NO_X$ SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the $NO_X$ annual and ozone-season model rules are similar, there are some differences. For example, the $NO_X$ annual model rule (but not the $NO_X$ ozone season model rule) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of $NO_X$ annual emissions. As a further example, the $NO_X$ ozone season model rule reflects the fact that the CAIR $NO_X$ ozone season trading program replaces the $NO_X$ SIP Call trading program after the 2008 ozone season and is coordinated with the $NO_X$ SIP Call program. The $NO_X$ ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 $NO_X$ SIP Call allowances to be used for compliance in the CAIR $NO_X$ ozone-season trading program. In addition, States have the option of continuing to meet their $NO_X$ SIP Call requirement by participating in the CAIR $NO_X$ ozone season trading program and including all their $NO_X$ SIP Call trading sources in that program.

The provisions of the CAIR $SO_2$ model rule are also similar to the provisions of the $NO_X$ annual and ozone season model rules. However, the $SO_2$ model rule is coordinated with the ongoing Acid Rain $SO_2$ cap-and-trade program under CAA title IV. The $SO_2$ model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR $SO_2$ cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR $SO_2$ cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model $SO_2$, $NO_X$ annual, and $NO_X$ ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated $SO_2$, $NO_X$ annual, and $NO_X$ ozone season trading programs.

In the SIP revision, Illinois chose to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions. Illinois has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions.

*C. Applicability Provisions for non-EGU $NO_X$ SIP Call Sources*

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR $NO_X$ ozone season program only, those units in the State's $NO_X$ SIP Call trading program that are not EGUs as defined under CAIR. However, Illinois has chosen not to expand the applicability provisions of the CAIR $NO_X$ ozone season trading program to include all non-EGUs in the State's $NO_X$ SIP Call trading program.

*D. $NO_X$ Allowance Allocations*

Under the $NO_X$ allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, $NO_X$ annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different $NO_X$ allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative $NO_X$ allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Illinois applied this flexibility to adopt systems for allocating allowances for the CAIR $NO_X$ annual trading program and for the CAIR $NO_X$ ozone season trading program that differ in several respects from the allocation systems in EPA's model rule. For both trading programs, Illinois sets aside 5 percent of the allowances for new sources and 25 percent for a ''clean air set aside.'' Under the clean air set aside, Illinois distributes allowances to three types of projects: (1) Projects that use renewable energy or that improve energy efficiency, (2) clean coal technology projects, including clean coal burning equipment (mainly integrated gasification combined cycle units), and (3) upgrades to pollution control equipment. While EPA expects Illinois' utilities to install several emission control systems even without this provision, this provision provides further incentive for Illinois utilities to install controls. Illinois also dedicates some of the set aside allowances for distribution for projects that are done relatively early. The rules require project sponsors to apply for allowances from this set aside, and the rules identify the criteria by which Illinois is to determine the number of allowances to be issued for a given project. The rules specify an initial subdivision of the clean air set aside according to project type, but the rules also provide for redistributing allocations among subdivisions if Illinois receives more or fewer requests for particular types of projects. The rules also specify how the new source set aside is to be allocated.

Illinois' rules provide that the allowances that are not set aside are allocated according to electrical output, with the caveat that the utilities are initially given the option of determining output either directly or as a fixed efficiency factor times heat input. In

either case, the output value is further adjusted, depending on the type of fuel burned, to reflect the emission rates expected from burning different fuels. In particular, the output from coal-fired units is unadjusted, the output from oil-fired units is multiplied by 0.6, and the output from units combusting other fuels is multiplied by 0.4.

EPA notes that, in sections 225.450(e) and 225.550(e), Illinois requires that, for purposes of monitoring output, the owner or operation of a CAIR unit must maintain a monitoring plan meeting certain requirements of ''40 CFR part 60 or 75, as applicable.'' Sections 225.450 and 225.550 address ''Monitoring, Recordkeeping, and Reporting Requirements for Gross Electrical Output and Useful Thermal Energy'', and paragraph (e) of each of these sections specifically mention ''gross electrical output.'' Consequently, EPA interprets sections 225.450(e) and 225.550(e) as limited to plans for monitoring output and as consistent with, and in addition to, the monitoring plan requirements under 40 CFR part 96, subparts HH and HHHH, which requirements are referenced in sections 225.410(c)(1) and 225.510(c)(1).

*E. Allocation of $NO_X$ Allowances From Compliance Supplement Pool*

The CAIR establishes a CSP to provide an incentive for early reductions in $NO_X$ annual emissions. The CSP consists of 200,000 CAIR $NO_X$ annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make $NO_X$ reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls. However, Illinois has chosen not to distribute the allowances of a CSP.

*F. Individual Opt-in Units*

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. In the model rule, a non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Illinois has chosen not to allow non-EGUs to opt into the CAIR $NO_X$ annual trading program, the CAIR $NO_X$ ozone season trading program, or the CAIR $SO_2$ trading program.

## VII. EPA Actions

EPA is issuing direct final approval of Illinois' CAIR submittal. Under this SIP revision, Illinois is choosing to participate in the EPA-administered cap-and-trade programs for $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions. The SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to $NO_X$ annual and $NO_X$ ozone season emissions, and 40 CFR 51.124(o), with regard to $SO_2$ emissions. EPA is determining that the SIP meets the requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions for Illinois. That action will remove and reserve 40 CFR 52.745 and 52.746.

More specifically, EPA is approving Subparts A, C, D, and E of Part 225 of Title 35 of the Illinois Administrative Code as submitted on September 14, 2007. The specific rules being approved include: In Subpart A, Sections 225.120, 225.130, 225.140, and 225.150; in Subpart C, Sections 225.300, 225.305, 225.310, 225.315, 225.320, and 225.325; in Subpart D, Sections 225.400, 225.405, 225.410, 225.415, 225.420, 225.425, 225.430, 225.435, 225.440, 225.445, 225.450, 225.455, 225.460, 225.465, 225.470, 225.475, and 225.480; and in Subpart E, Sections 225.500, 225.505, 225.510, 225.515, 225.520, 225.525, 225.530, 225.535, 225.540, 225.545, 225.550, 225.555, 225.560, 225.565, 225.570, and 225.575. Section 225.100 (entitled ''Severability'') was not included in Illinois' September 2007 submittal but was included in Illinois' mercury rule submittal; EPA plans to address this section as part of its rulemaking on that mercury rule submittal. EPA is also deferring action on Subpart F, which EPA also plans to address in its rulemaking on Illinois' rules regarding mercury control.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective December 17, 2007 without further notice unless we receive relevant adverse written comments by November 15, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective December 17, 2007.

## VIII. Statutory and Executive Order Reviews

*Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

*Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

*Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

*Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

*National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(178) to read as follows:

**§ 52.720 Identification of plan.**

* * * * *

(c)* * *

(178) On September 14, 2007, the Illinois Environmental Protection Agency submitted rules and related material to address requirements under the Clean Air Interstate Rule. These rules mandate participation of electric generating units in EPA-run trading programs for annual emissions of sulfur dioxide, annual emissions of nitrogen oxides, and ozone season emissions of nitrogen oxides. These rules provide a methodology for allocating allowances to subject sources and require these sources to hold sufficient allowances to accommodate their emissions and to meet various monitoring, recordkeeping, and reporting requirements. EPA is approving the submitted provisions of Subparts A, C, D, and E of Part 225 of Title 35 of Illinois Administrative Code; EPA is deferring action on Subpart F.

(i) Incorporation by reference.

(A) Title 35 of the Illinois Administrative Code: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Part 225: Control of Emissions from Large Combustion Sources, effective August 31, 2007, including Subpart A: General Provisions, Subpart C: Clean Air Act Interstate Rule (CAIR) $SO_2$ Trading Program, Subpart D: CAIR $NO_X$ Annual Trading Program, and Subpart E: CAIR $NO_X$ Ozone Season Trading Program.

[FR Doc. E7–20142 Filed 10–15–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

**[EPA–R07–OAR–2007–0718; FRL–8483–1]**

### Approval and Promulgation of State Implementation Plans and Operating Permits Program; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Iowa State Implementation Plan (SIP) and Operating Permits Program submitted by the state of Iowa. These revisions update and clarify various rules and make minors revisions and corrections. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the State's revised air program rules.

**DATES:** This direct final rule will be effective December 17, 2007, without further notice, unless EPA receives adverse comment by November 15, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0718, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. *E-mail: Hamilton.heather@epa.gov*.

3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2007–0718. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:



#### What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

**What does Federal approval of a state regulation mean to me?**

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

**What is the Part 70 operating permits program?**

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or $PM_{10}$; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revision to the state operating permits program are also subject to public notice, comment, and our approval.

**What is the Federal approval process for an operating permits program?**

In order for state regulations to be included in the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA, including revisions to the state program, are included in the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

**What is being addressed in this document?**

EPA is approving the State Implementation Plan (SIP) revisions submitted by the state of Iowa which include minor revisions to various rules. The state of Iowa periodically makes minor revisions that are included under its general rulemaking and are typically processed twice a year. The revisions are described as follows:

With regard to Iowa's variance provision in subrule 21.2(4)''c'' of the Iowa Administrative Code (IAC), the Iowa Department of Natural Resources added language to clarify the Prevention of Significant Deterioration (PSD) requirements for which they may not grant a variance and referenced the new chapter in the Iowa Administrative Code that addresses PSD requirements. The revision clarifies that variances cannot be issued to sources seeking permit limits on their potential emissions in order to avoid major source permitting requirements. In other words, a variance cannot be issued to a source seeking a synthetic minor permit.

Revisions were made to subrules 22.201(2) and 22.300(3) which address applicability of Iowa's synthetic minor permit program. The revisions correct cross references to the state's rules for Title V permits, Acid Rain permits and permits by rule for small sources. These changes apply to the SIP and Iowa's operating permits program.

Revisions were made to Chapter 25 of the IAC, relating to emissions monitoring methods, to update references to Federal reference methods and performance standards. These changes apply to SIP monitoring requirements.

**Have the requirements for approval of a SIP revision and a Part 70 revision been met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. These revisions are minor clarifications, updates, and corrections which do not affect the stringency of existing requirements. These revisions are also consistent with applicable EPA requirements in Title V of the CAA and 40 CFR Part 70.

**What action is EPA taking?**

EPA is approving these revisions submitted by Iowa on April 26, 2007, to update the SIP and the Iowa Operating Permits Program to include minor revisions and updates. We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

**Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.**

A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 70*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 5, 2007.

**William Rice,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising entries for 567–21.2, 567–22.201, 567–22.300, and 567–25.1, to read as follows:

**§ 52.820 Identification of plan.**

* * * * *

(c) * * *

EPA.-APPROVED IOWA REGULATIONS

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Iowa Department of Natural Resources Environmental Protection Commission [567]** | | | | |
| * | * | * | * | * |
| **Chapter 21—Compliance** | | | | |
| * | * | * | * | * |
| 567–21.2 ..... | Variances ..... | 04/04/07 | 10/16/07 [*insert FR page number where the document begins*]. | |
| * | * | * | * | * |
| **Chapter 22—Controlling Pollution** | | | | |

EPA.-APPROVED IOWA REGULATIONS—Continued

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * * * | * | * * * | |
| 567–22.201 | Eligibility for Voluntary Operating Permits ..... | 04/04/07 | 10/16/07 [*insert FR page number where the document begins*]. | |
| * | * * * | * | * * * | |
| 567–22.300 | Operating Permit by Rule for Small Sources | 04/04/07 | 10/16/07 [*insert FR page number where the document begins*]. | |
| * | * * * | * | * * * | |
| **Chapter 25—Measurement of Emissions** | | | | |
| 567–25.1 ..... | Testing and Sampling of New and Existing Equipment. | 04/04/07 | 10/16/07 [*insert FR page number where the document begins*]. | |
| * | * * * | * | * * * | |

* * * * *

## PART 70—[AMENDED]

■ 3. The authority citation for Part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 4. Appendix A to Part 70 is amended by adding paragraph (i) under ''Iowa'' to read as follows:

### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(i) The Iowa Department of Natural Resources submitted for program approval rules 567–22.105(2), 567–22.106(6), 567–22.201(2), 567–22.300(3) on April 19, 2007. The state effective date was April 4, 2007. These revisions to the Iowa program are approved effective December 17, 2007.

* * * * *

[FR Doc. E7–20378 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[EPA–R04–OAR–2007–0549–200742; FRL–8482–4]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Georgia: Redesignation of Murray County, GA, 8-Hour Ozone Nonattainment Area to Attainment for Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a request submitted on June 15, 2007, from the State of Georgia, through the Georgia Environmental Protection Division (EPD), to redesignate the Murray County 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Murray County 8-hour nonattainment ozone area is a partial county area, comprised of the portion of Murray County that makes up the Chattahoochee National Forest (Murray County Area). EPA's approval of the redesignation request is based on the determination that the Murray County Area has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA), including the determination that the Murray County Area has attained the 8-hour ozone standard. Additionally, EPA is approving a revision to the Georgia State Implementation Plan (SIP) including the 8-hour ozone maintenance plan for the Murray County Area that contains the new 2018 motor vehicle emission budgets (MVEBs) for nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs). Through this action, EPA is also finding the 2018 MVEBs adequate for the purposes of transportation conformity.

**DATES:** *Effective Date:* This rule will be effective November 15, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–0549. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Stacy Harder, Regulatory Development Section, Air Planning Branch, Air,

Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Harder can be reached via telephone number at (404) 562–9042 or electronic mail at *Harder.Stacy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. What Is the Background for the Actions?

On June 15, 2007, Georgia, through the GA EPD, submitted a request to redesignate Murray County to attainment for the 8-hour ozone standard, and for EPA approval of the Georgia SIP revision containing a maintenance plan for the Murray County Area. In an action published on August 29, 2007 (72 FR 49679), EPA proposed to approve the redesignation of Murray County to attainment. EPA also proposed approval of Georgia's plan for maintaining the 8-hour NAAQS as a SIP revision, and proposed to approve the 2018 regional MVEBs for the Murray County Area that were contained in the maintenance plan. In the August 29, 2007, proposed action, EPA also provided information on the status of its transportation conformity adequacy determination for the Macon Area MVEBs. EPA received no comments on the August 29, 2007, proposal.

In this action, EPA is also finalizing its determination that the new regional MVEBs for the Macon Area are adequate for transportation conformity purposes. The MVEBs included in the maintenance plan are as follows:

MURRAY COUNTY 2018 MVEBS

[Tons per day]

| | 2018 |
|---|---|
| VOCs | 0.0117 |
| $NO_X$ | 0.0129 |

EPA's adequacy public comment period on these MVEBs (as contained in Georgia's submittal) began on June 21, 2007, and closed on July 23, 2007. No comments were received during EPA's adequacy public comment period. Through this **Federal Register** notice, EPA is finding the 2018 regional MVEBs, as contained in Georgia's submittal, adequate. These MVEBs meet the adequacy criteria contained in the Transportation Conformity Rule. The new regional MVEBs must be used for future transportation conformity determinations.

As was discussed in greater detail in the August 29, 2007, proposal, this redesignation is for the 8-hour ozone designations finalized in 2004 (69 FR 23857, April 30, 2007). Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS, remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision affirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8th decision clarified that for those areas with 1-hour MVEBs in their 1-hour maintenance plans, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93. The Murray County Area was never designated nonattainment for the 1-hour ozone standard and thus does not have 1-hour MVEBs to consider.

For the above reasons, and those set forth in the August 29, 2007, proposal for the redesignation of the Murray County Area, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of Murray County to attainment. Even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

## II. What Actions Is EPA Taking?

EPA is taking final action to approve Georgia's redesignation request and to change the legal designation of the Murray County Area from nonattainment to attainment for the 8-hour ozone NAAQS. The Murray County Area is comprised of the portion of Murray County that makes up the Chattahoochee National Forest. EPA is also approving Georgia's 8-hour ozone maintenance plan for the Murray County Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep Murray County in attainment for the 8-hour ozone NAAQS through 2018. These approval actions are based on EPA's determination that Georgia has demonstrated that the Murray County Area has met the criteria for redesignation to attainment specified in the CAA, including a demonstration that the Murray County Area has attained the 8-hour ozone standard. EPA's analyses of Georgia's 8-hour ozone redesignation request and

maintenance plan are described in detail in the proposed rule published August 29, 2007 (72 FR 49679).

Consistent with the CAA, the maintenance plan that EPA is approving also includes 2018 regional MVEBs for $NO_X$ and VOCs for the Murray County Area. In this action, EPA is approving these 2018 MVEBs. For regional emission analysis years that involve years prior to 2018, there are no applicable budgets (for the purpose of conducting transportation conformity analyses), so the transportation conformity partners should consult with the area's interagency consultation group to determine the appropriate interim tests to use. For regional emission analysis years that involve the year 2018 and beyond, the applicable budgets, for the purpose of conducting transportation conformity analyses, are the new 2018 MVEBs. In this action, EPA is also finding adequate and approving the Murray County Area's new regional MVEBs for $NO_X$ and VOCs.

## III. Why Are We Taking These Actions?

EPA has determined that the Murray County Area has attained the 8-hour ozone standard and has also determined that Georgia has demonstrated that all other criteria for the redesignation of the Murray County Area from nonattainment to attainment of the 8-hour ozone NAAQS have been met. See section 107(d)(3)(E) of the CAA. EPA is also taking final action to approve the maintenance plan for Murray County as meeting the requirements of sections 175A and 107(d) of the CAA. Furthermore, EPA is finding adequate and approving the new 2018 regional MVEBs contained in Georgia's maintenance plan because these MVEBs are consistent with maintenance for the Murray County Area. In the August 29, 2007, proposal to redesignate Murray County, EPA described the applicable criteria for redesignation to attainment and its analysis of how those criteria have been met. The rationale for EPA's findings and actions is set forth in the proposed rulemaking and summarized in this final rulemaking.

## IV. What Are the Effects of These Actions?

Approval of the redesignation request changes the legal designation of the Murray County Area, Georgia for the 8-hour ozone NAAQS, found at 40 CFR part 81. The approval also incorporates into the Georgia SIP a plan for maintaining the 8-hour ozone NAAQS in Murray County through 2018. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS, and establishes regional MVEBs for the year 2018 for Murray County.

## V. Final Action

After evaluating Georgia's redesignation request, EPA is taking final action to approve the redesignation and change the legal designation of Murray County, Georgia from nonattainment to attainment for the 8-hour ozone NAAQS. Through this action, EPA is also approving into the Georgia SIP the 8-hour ozone maintenance plan for the Murray County Area, which includes the new regional 2018 MVEBs of 0.0117 tpd for VOCs, and 0.0129 tpd for $NO_X$. EPA is also finding adequate and approving the new 2018 regional MVEBs contained in Georgia's maintenance plan for the Murray County Area. If transportation conformity is implemented in this area, the Georgia transportation partners will need to use these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005.

## VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 4, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 and 81 are amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart L—Georgia

■ 2. Section 52.570 is amended by adding a new entry at the end of the table for ''26. Murray County 8-hour Ozone Maintenance Plan'' to read as follows:

**§ 52.570 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date |
|---|---|---|---|
| * * * | * | * * | * |
| 26. Murray County 8-hour Ozone Maintenance Plan .... | Murray County ..... | June 15, 2007 ..... | October 16, 2007 [Insert first page of publication]. |

## PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 4. In § 81.311, the table entitled ''Georgia-Ozone (8–Hour Standard)'' is amended by revising the entry for ''Monroe County (part),'' to read as follows:

**§ 81.311 Georgia.**

* * * * *

GEORGIA-OZONE

[8-Hour standard]

| Designated area | Designation [a] | | Category/classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * * * | * | * | * | * |
| Murray Co (Chattahoochee Nat Forest), GA: Murray County (part).<br>The area enclosed to the east by Murray County's eastern border, to the north by latitude of 34.9004 degrees, to the west by longitude 84.7200 degrees, and to the south by 34.7040 degrees. All mountain peaks within the Chattahoochee National Forest area of Murray County that have an elevation greater than or equal to 2,400 feet and that are enclosed by contour lines that close on themselves. | 11/15/07 | Attainment. | | |
| * * * | * | * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E7–20340 Filed 10–15–07; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

**[EPA–R05–OAR–2007–0405; FRL–8477–6]**

### Approval of Implementation Plans; Wisconsin; Clean Air Interstate Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is partially approving and partially disapproving a revision to the Wisconsin State Implementation Plan (SIP) submitted on June 19, 2007. The Wisconsin SIP revision was proposed for partial approval and partial disapproval on July 30, 2007. No comments were received during the comment period for the proposal. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) which concerns sulfur dioxide ($SO_2$), oxides of nitrogen ($NO_X$) annual, and $NO_X$ ozone season emissions for the State of Wisconsin, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Wisconsin's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is approving an abbreviated SIP revision that addresses the methodology to be used to allocate annual and ozone season $NO_X$ allowances under the CAIR FIP, except for allowances in the compliance supplement pool. The portions of Wisconsin's submittal (those associated with the compliance supplement pool and Superior Environmental Performance) that EPA is disapproving are inconsistent with CAIR and/or otherwise inappropriate to include in a CAIR SIP and must, therefore, be disapproved.

**DATES:** This final rule is effective on October 16, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–0405. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353–6960, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. What Action Is EPA Taking?

*CAIR SIP Partial Approval and Partial Disapproval*

EPA is partially approving and partially disapproving a revision to Wisconsin's SIP, submitted on June 19, 2007, which modifies the application of certain provisions of the CAIR FIP concerning $SO_2$, $NO_X$ annual and $NO_X$ ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) Wisconsin is subject to the CAIR FIP that implements the CAIR requirements by requiring certain EGUs to participate in the EPA-administered Federal CAIR $SO_2$, $NO_X$ annual, and $NO_X$ ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating $NO_X$ allowances for the $NO_X$ annual and $NO_X$ ozone season trading programs, instead of the Federal allocation methodology otherwise provided in the FIP. Consistent with the flexibility provided in the FIP, these provisions will be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Wisconsin. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Wisconsin's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is disapproving certain separable provisions of Wisconsin's submittal. These provisions include NR 432.04 ''compliance supplement pool'' and NR 432.08 ''superior environmental performance.'' NR 432.04 includes provisions that are inconsistent with CAIR. NR 432.08 would allow sources to make voluntary reductions beyond state and Federal requirements in exchange for regulatory flexibility.

NR 432.04 contains the provisions Wisconsin has adopted for distribution of the CSP. Consistent with the flexibility given to states in the FIP, Wisconsin has chosen to modify the provisions of the CAIR $NO_X$ annual FIP concerning the allocation of allowances from the CSP. Wisconsin has chosen to distribute CSP allowances based on early reduction credits or based on the need to avoid undue risk to electric reliability. The first methodology based on early reduction credits essentially mirrors the FIP's early reduction credit methodology.

The description in Wisconsin's rule of the second methodology based on need is somewhat unclear. EPA interprets the provision to require a demonstration that a unit cannot avoid undue risk to electric reliability if it keeps its emissions in 2009 from exceeding its 2009 allowance allocation. Even if the unit could obtain additional allowances to cover emissions above its allocation, and thereby comply with the requirement to hold allowances covering emissions, the unit would still be eligible for CSP allowances. In contrast, EPA's CSP provisions in the model rule, the FIP, and CAIR require a demonstration that, without being given CSP allowances, a unit cannot avoid undue risk while keeping its 2009 emissions from exceeding all the allowances it holds, both its 2009 allowance allocations and other allowances it can obtain for compliance. Thus, Wisconsin's provision is inconsistent with EPA's CSP provisions. Moreover, since Wisconsin's entire CSP

is available for units meeting either the early reduction credit or the undue risk criteria, the early reduction credit and undue risk provisions cannot be administered separately, and the Wisconsin CSP must be administered by a single agency. Consequently, EPA is disapproving all of Wisconsin's CSP provisions. This portion of Wisconsin's SIP submittal is separable from the rest of the submittal and can be disapproved without compromising the integrity of the portions we are approving.

NR 432.08 would grant regulatory flexibility to sources that voluntarily reduce emissions beyond what is required under state and Federal regulations. The scope of regulatory flexibility provided by NR 432.08 is ambiguous. To the extent this flexibility relates to state-only regulatory requirements, the regulatory provisions are not appropriately included in a SIP. To the extent this flexibility relates to Federal requirements reflected in state regulations, this type of flexibility is not allowed under CAIR, and it is inappropriate to simply assume that other Federal requirements allow such flexibility. Therefore, the regulatory flexibility provisions cannot be included in Wisconsin's CAIR abbreviated SIP revision and cannot be approved.

## II. Did Anyone Comment on the Proposed Partial Approval and Partial Disapproval?

No comments were received during the 30-day comment period on the proposed partial approval and partial disapproval that was published on July 30, 2007.

## III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes statewide emission budgets for $SO_2$ and $NO_X$ and is to be implemented in two phases. The first phase of $NO_X$ reductions starts in 2009 and continues through 2014, while the first phase of $SO_2$ reductions starts in 2010 and continues through 2014. The second phase of reductions for both $NO_X$ and $SO_2$ starts in 2015 and continues thereafter. CAIR requires states to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or, (2) adopting other control measures of the state's choosing and demonstrating that such control measures will result in compliance with the applicable state $SO_2$ and $NO_X$ budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that states must adopt (with certain limited changes, if desired), if they want to participate in the EPA-administered trading programs. With two exceptions, only states that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for states that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for states that include all non-EGUs from their $NO_X$ SIP Call trading programs in their CAIR $NO_X$ ozone season trading programs.

## IV. Wisconsin's CAIR SIP Submittal

### *A. Nature of Wisconsin's Submittal*

On June 19, 2007, Wisconsin submitted a request to process their rules for addressing CAIR requirements. The rules became effective at the state level on August 1, 2007. The Wisconsin Department of Natural Resources (WDNR) held hearings on these proposed rules on October 10 and October 12, 2006. The 30-day public comment period for the proposed rules ended on October 23, 2006.

### *B. Summary of Wisconsin's Rules*

The WDNR submitted Chapter NR 432 of the Wisconsin Administrative Code Chapters Related to Air Pollution Control, entitled ''Allocation of Clean Air Interstate Rule $NO_X$ Allowances'' for inclusion in the Wisconsin SIP. These rules are designed to address the requirements of the CAIR.

Chapter NR 432 includes eight subparts:

1. NR 432.01 Applicability; purpose
2. NR 432.02 Definitions
3. NR 432.03 CAIR $NO_X$ allowance allocation
4. NR 432.04 Compliance supplement pool
5. NR 432.05 CAIR $NO_X$ ozone season allowance allocation
6. NR 432.06 Timing requirements for allocations of CAIR $NO_X$ allowances and CAIR $NO_X$ ozone season allowances
7. NR 432.07 CAIR renewable units
8. NR 432.08 Superior environmental performance

A detailed description of the rule and its subparts can be found in the proposed partial approval/partial disapproval published in the **Federal Register** on July 30, 2007 (72 FR 41669).

### *C. $NO_X$ Allowance Allocations*

The CAIR FIP provides States the flexibility to establish a different $NO_X$ allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met. These requirements relate to the timing of submission of units, allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative $NO_X$ allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Subchapter NR 432.01 entitled, ''Applicability; purpose'' consolidates the applicability and purpose section for both the annual and ozone season trading programs. While the FIP already contains an applicability section, the state is required to adopt this section to satisfy its own rulemaking requirements. Wisconsin is adopting the applicability section to apply only to the allocation methodology in their rule but this does not affect the applicability of the CAIR FIP.

Subchapter NR 432.02 entitled, ''Definitions'' adopts many of the CAIR FIP definitions but is rewritten in a format to conform to the state's regulatory writing style requirements. While the FIP already contains a definitions section, the state is required to adopt this section to satisfy its own rulemaking requirements. Wisconsin is adopting the definition section to apply only to the allocation methodology in their rule but this does not affect the applicability of the CAIR FIP. Additionally, WDNR has added definitions not found in the CAIR FIP. These definitions are included to address the fact that Wisconsin's rule allocates allowances to renewable energy sources, which the FIP does not do, and to address the fact that Wisconsin allocates allowances to emitting sources based on energy output rather than heat input. The CAIR FIP uses a heat input based allocation methodology.

Consistent with the flexibility given to states in the CAIR FIP, Wisconsin has chosen to replace the provisions of the CAIR $NO_X$ annual FIP concerning the allocation of $NO_X$ annual allowances with its own methodology. NR 432.03 contains the provisions for the $NO_X$ annual allowance distribution methodology Wisconsin has adopted. Wisconsin has chosen to distribute $NO_X$ annual allowances based upon gross electrical output. The CAIR FIP

allocates allowances to $NO_X$ emitting sources only, and issues allowances on a fuel-weighted basis. Wisconsin's rule utilizes a different approach, which allocates allowances to renewable energy units, as well as $NO_X$ emitting sources, and does not issue allowances on a fuel-weighted basis. For units that have operated for five or more consecutive years, allocations are determined based on the unit's three highest annual gross electrical outputs. Wisconsin has created a new unit set-aside for sources that have fewer than five years of operating data. The new unit set-aside is equal to seven percent of the number of $NO_X$ annual allocations that new unit can request from the new unit set-aside and is limited by the number of the unit's total tons of $NO_X$ emissions during the calendar year immediately preceding the calendar year of the request. Updating of unit baselines for allocation purposes occurs every five years beginning in 2011. The initial allocation of allowances for the years 2009–2014 is set forth in NR 432.03.

In a similar manner, Wisconsin has developed an ozone season $NO_X$ budget consistent with the flexibility given to states in the CAIR FIP. Wisconsin has chosen to replace the provisions of the CAIR $NO_X$ ozone season FIP concerning the allocation of $NO_X$ annual allowances with its own methodology. NR 432.05 contains the provisions for the $NO_X$ ozone season allowance distribution methodology that Wisconsin has adopted. Wisconsin has chosen to distribute $NO_X$ ozone season allowances based upon gross electrical output. The CAIR FIP allocates allowances to $NO_X$ emitting sources only, and issues allowances on a fuel-weighted basis. Wisconsin's rule uses a different approach, which allocates allowances to renewable energy units, as well as $NO_X$ emitting sources, and does not issue allowances on a fuel-weighted basis. Under Wisconsin's rule, the three highest ozone season amounts of the unit's gross electrical output will be the basis for determining that unit's allocations for units that have operated for five or more consecutive years. Additionally, Wisconsin has created a new unit set-aside for sources that have fewer than five years of operating data. The new unit set-aside is equal to seven percent of the total trading budget. The number of $NO_X$ ozone season allocations that a new unit can request from the new unit set-aside is limited by the number of that unit's total tons of $NO_X$ emissions during the ozone season preceding the calendar year of the request. Updating of unit baselines for allocation purposes occurs every five years beginning in 2011. The initial allocation of allowances for the years 2009–2014 is set forth in NR 432.05.

NR 432.06 describes the timing requirements for allocating both $NO_X$ annual allowances and $NO_X$ ozone season allowances. These requirements are consistent with the timing requirements for allocating allowances under an abbreviated SIP scenario found in 40 CFR 51.123 and are, therefore, being approved.

Since Wisconsin has chosen to allocate both $NO_X$ annual and $NO_X$ ozone season allowances to renewable energy units, the state has adopted provisions specifically for these sources. These provisions are found in NR 432.07 which requires renewable units to comply with the same trading requirements that apply to the regulated EGUs, such as designating an account representative who represents the unit in any trading activity, establishing accounts for the $NO_X$ trading programs, and the process for requesting $NO_X$ allowances.

*D. Allocation of $NO_X$ Allowances From the Compliance Supplement Pool (CSP)*

The CSP provides an incentive for early reductions in $NO_X$ annual emissions. The CSP consists of 200,000 CAIR $NO_X$ annual allowances for 2009 for the entire CAIR region, and a state's share of the CSP is based upon the state's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make $NO_X$ reductions during 2007 or 2008 beyond what is required by any applicable state or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR $NO_X$ annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those states. *See* 40 CFR 51.123(p)(2) (requiring that State CSP provisions be consistent with the model rule at 40 CFR 96.143, the FIP at 40 CFR 97.143, or CAIR at 40 CFR 51.123(e)(4)).

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen to modify the provisions of the CAIR $NO_X$ annual FIP concerning the allocation of allowances from the CSP. NR 432.04 contains the provisions Wisconsin has adopted for distribution of the CSP. Wisconsin has chosen to distribute CSP allowances based on early reduction credits or based on the need to avoid undue risk to electric reliability. The first methodology based on early reduction credits essentially mirrors the FIP's early reduction credit methodology.

The description in Wisconsin's rule of the second methodology based on need is somewhat unclear. EPA interprets the provision to require a demonstration that a unit cannot avoid undue risk to electric reliability if it keeps its emissions in 2009 from exceeding its 2009 allowance allocation. Even if the unit could obtain additional allowances to cover emissions above its allocation, and thereby comply with the requirement to hold allowances covering emissions, the unit could be given CSP allowances. In contrast, EPA's CSP provisions in the model rule, the FIP, and CAIR require a demonstration that, without being given CSP allowances, a unit cannot avoid undue risk while keeping its 2009 emissions from exceeding all the allowances it holds, both its 2009 allowance allocations and other allowances it can obtain for compliance. Thus, Wisconsin's provision is inconsistent with EPA's CSP provisions. Moreover, since Wisconsin's entire CSP is available for units meeting either the early reduction credit or the undue risk criteria, the early reduction credit and undue risk provisions cannot be administered separately, and the Wisconsin CSP must be administered by a single agency. Consequently, EPA is disapproving all of Wisconsin's CSP provisions. This portion of Wisconsin's SIP submittal is separable from the rest of the submittal and can be disapproved without compromising the integrity of the portions we are approving.

In the absence of approved CSP provisions in an abbreviated CAIR SIP, the FIP provisions for the allocation of CSP allowances continue to apply in Wisconsin.

*E. Individual Opt-in Units*

The opt-in provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must

apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a state only if the state's abbreviated SIP revision adopts the opt-in provisions. The state may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The state also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the state without the ability for units to opt into the program.

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen not to allow non-EGUs meeting certain requirements to participate in the CAIR $NO_X$ annual trading program, the CAIR $NO_X$ ozone season trading program, or the CAIR SO2 trading program.

*F. Additional Provision Found in Wisconsin's Abbreviated CAIR SIP Submittal*

There is an additional provision that Wisconsin has submitted as part of the abbreviated CAIR SIP.

NR 432.08 would allow sources to make voluntary reductions beyond state and Federal requirements in exchange for regulatory flexibility. For the reasons discussed above, we are disapproving this portion of Wisconsin's CAIR abbreviated SIP. This portion is separable from the rest of Wisconsin's SIP submittal and can be disapproved without compromising the integrity of the portions we are approving.

**V. Correction of Typographical Error in Proposed Rule**

We would like to point out a typographical error in the proposed partial approval/partial disapproval published on July 31, 2007 (72 FR 41669). In section, V. Analysis of Wisconsin's CAIR SIP Submittal, subsection C. State Budgets for Allowance Allocations, we stated, ''The CAIR FIP established the budgets for Wisconsin as * * * 17,987 tons for $NO_X$ ozone season emissions for 2010–2014 * * *'' We are correcting this to read, ''The CAIR FIP established the budgets for Wisconsin as * * * 17,987 tons for $NO_X$ ozone season emissions for 2009–2014 * * *'' As stated earlier in that same subsection $NO_X$ budgets, both seasonal and annual, were developed for the 2009–2014 period.

**VI. Final Action**

EPA is partially approving and partially disapproving Wisconsin's abbreviated CAIR SIP revision submitted on June 19, 2007. Wisconsin is covered by the CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to states in the FIP, Wisconsin has adopted provisions for allocating allowances under the CAIR FIP $NO_X$ annual and $NO_X$ ozone season trading programs. As provided for in the CAIR FIP, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIP in Wisconsin. These provisions in Wisconsin's abbreviated SIP revision meet the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to $NO_X$ annual and $NO_X$ ozone season emissions. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Wisconsin's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

Wisconsin's submittal also contains provisions that are inconsistent with requirements concerning the CSP and that grant unacceptable regulatory flexibility to some sources. EPA is disapproving these portions of Wisconsin's rule. We are able to disapprove these specific portions of Wisconsin's submittal because they are separable from the rest of Wisconsin's submittal and disapproving only these parts has no effect on the rest of the submittal that we are approving.

**VII. When Is This Action Effective?**

EPA finds that there is good cause for this approval to become effective on October 16, 2007, because a delayed effective date is unnecessary due to the nature of the approval, which allows the State to make allocations under its CAIR rules. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

CAIR SIP approvals relieve states and CAIR sources within states from being subject to allowance allocation provisions in the CAIR FIPs that otherwise would apply to it, allowing States to make their own allowance allocations based on their SIP-approved State rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Wisconsin's relief from these obligations provides good cause to make this rule effective October 16, 2007, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the State of Wisconsin and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

**VIII. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action approves pre-existing requirements under state law and would not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard and amends the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 97*

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(116) to read as follows:

**§ 52.2570 Identification of plan.**

* * * * *

(c) * * *

(116) A revision to the State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on June 19, 2007. This revision consists of regulations to meet the requirements of the Clean Air Interstate Rule.

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference: NR 432.01 ''Applicability; purpose''; NR 432.02 ''Definitions''; NR 432.03 ''CAIR $NO_X$ allowance allocation''; NR 432.05 ''CAIR $NO_X$ ozone season allowance allocation''; NR 432.06 ''Timing requirements for allocations of CAIR $NO_X$ allowances and CAIR $NO_X$ ozone season allowances''; and NR 432.07 ''CAIR renewable units'', as created and published in the (Wisconsin) Register, July, 2007, No. 619, effective August 1, 2007.

* * * * *

■ 40 CFR part 97 is amended as follows:

## PART 97—[AMENDED]

■ 3. The authority citation for part 97 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 4. Appendix A to Subpart EE is amended by adding the entry for Wisconsin in alphabetical order under paragraph 1. to read as follows:

**Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations**

* * * * *

1. * * *

Wisconsin

* * * * *

■ 5. Appendix A to Subpart EEEE is amended by adding the entry for ''Wisconsin'' in alphabetical order to read as follows:

**Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations**

* * * * *

Wisconsin

* * * * *

[FR Doc. E7–20165 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

**[EPA–R05–OAR–2007–0390; FRL–8481–2]**

### Approval of Implementation Plans; Ohio; Clean Air Interstate Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the Ohio State Implementation Plan (SIP) submitted on September 26, 2007. Ohio initially submitted a SIP revision on April 17, 2007, with a proposed rule and then revised it and submitted a SIP revision with a final rule on September 26, 2007. This SIP revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR FIP) concerning sulfur dioxide ($SO_2$), oxides of nitrogen ($NO_X$) annual, and $NO_X$ ozone season emissions for the State of Ohio, promulgated on April 28, 2006 and subsequently revised December 13, 2006. EPA is not making any changes to the CAIR FIP, but is amending to the extent EPA approves Ohio's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The Ohio SIP revision that was submitted on April 17, 2007, was a full CAIR SIP revision. In a letter submitted on September 26, 2007, Ohio requested that EPA consider the September 26, 2007, submittal as two separate submittals, i.e., as a full CAIR SIP and as an abbreviated CAIR SIP. Ohio requested that EPA act on specific portions of the September 26, 2007,

submittal as an abbreviated CAIR SIP. Consequently, today, EPA is taking final action only on the abbreviated SIP revision and not the full CAIR SIP revision, which will be the subject of a separate future action. EPA is approving Ohio's abbreviated SIP revision that addresses the methodology used to allocate annual and ozone season $NO_X$ allowances to affected electric generating units (EGUs), and the opt-in provisions, under the CAIR trading programs and the CAIR FIP.

**DATES:** This direct final rule is effective December 17, 2007 without further notice, unless EPA receives adverse comment by November 15, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0390, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov*.
3. *Fax:* (312) 886–5824.
4. *Mail:* Reference EPA–R05–OAR–2007–0390 Docket, Air Programs Branch, U.S. Environmental Protection Agency, (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery or Courier:* John Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, U.S. Environmental Protection Agency, (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. ''EPA–R05–OAR–2007–0390''. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. The telephone number is (312) 886–6084. Mr. Paskevicz can also be reached via electronic mail at: *paskevicz.john@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. What Action Is EPA Taking?

*CAIR SIP Approval*

EPA is approving a revision to Ohio's SIP, submitted on September 26, 2007, that modifies the application of certain provisions of the CAIR FIP concerning $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) Ohio is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain EGUs to participate in the EPA-administered Federal CAIR $SO_2$, $NO_X$ annual, and $NO_X$ ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating $NO_X$ allowances for the $NO_X$ annual and $NO_X$ ozone season trading programs. The CAIR FIPs provide that this methodology will be used to allocate $NO_X$ allowances to sources in Ohio, instead of the federal allocation methodology otherwise provided in the FIPs. The SIP revision provides a methodology for allocating the compliance supplement pool in the CAIR $NO_X$ annual trading program. The SIP also allows for individual units not otherwise subject to the CAIR trading programs to opt into such trading programs in accordance with opt-in provisions of the CAIR FIPs. Consistent with the flexibility provided in the FIPs, these provisions will be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIPs for Ohio. EPA is not making any changes to the CAIR FIPs, but is amending to the extent EPA approves Ohio's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

## II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include

control measures that reduce emissions of $SO_2$, which is a precursor to $PM_{2.5}$ formation, and/or $NO_X$, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for $SO_2$ and annual State-wide emission reduction requirements for $NO_X$. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for $NO_X$ for the ozone season (May 1st to September 30th). Under CAIR, States may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a Federal Implementation Plan (FIP) to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR $SO_2$, $NO_X$ annual, and $NO_X$ ozone-season model trading programs, as appropriate. The CAIR FIP $SO_2$, $NO_X$ annual, and $NO_X$ ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant ($SO_2$, $NO_X$ annual, and $NO_X$ ozone season) in all States covered by CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (*e.g.*, the methodology for allocating $NO_X$ allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements.

## III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for $SO_2$ and $NO_X$ and is to be implemented in two phases. The first phase of $NO_X$ reductions starts in 2009 and continues through 2014, while the first phase of $SO_2$ reductions starts in 2010 and continues through 2014. The second phase of reductions for both $NO_X$ and $SO_2$ starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either (1) requiring EGUs to participate in the EPA-administered cap-and-trade programs or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State $SO_2$ and $NO_X$ budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their $NO_X$ SIP Call trading programs in their CAIR $NO_X$ ozone season trading programs.

## IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the $NO_X$ allowance allocation methodology).

A State submitting an abbreviated SIP revision may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade programs to the state submitting the revision. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that, the CAIR FIPs provide, will be used instead of or in conjunction with the corresponding provisions in the CAIR FIP rules in that State. Specifically, the abbreviated SIP revisions may:

1. Include $NO_X$ SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP $NO_X$ ozone season trading program;

2. Provide for allocation of $NO_X$ annual or ozone season allowances by the State, rather than the Administrator, and using a methodology chosen by the State;

3. Provide for allocation of $NO_X$ annual allowances from the CSP by the State, rather than by the Administrator, and using the State's choice of allowed, alternative methodologies; and/or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by that approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording $NO_X$ allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are

implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the September 26, 2007, submittal from Ohio requests an abbreviated SIP revision. As discussed below, Ohio requested three of the four provisions for which a State may request an abbreviated SIP. The State requested that its allocation of $NO_X$ annual and $NO_X$ ozone season allowances for EGUs under the FIP be used instead of the corresponding provisions of the CAIR FIPs in effect in the State. The State requested that its allocation of $NO_X$ annual allowances from the compliance supplement pool (CSP) be used instead of the corresponding provisions of the CAIR FIPs in effect in the State. Finally, the State asked that units, that are not otherwise CAIR units, may opt individually into the CAIR FIP cap-and-trade program under the opt-in provisions in the CAIR FIP rules.

## V. Analysis of Ohio's CAIR SIP Submittal

### *A. State Budgets for Allowance Allocations*

The CAIR $NO_X$ annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional $NO_X$ budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State $NO_X$ annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State $SO_2$ budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated under the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of $SO_2$ emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of emissions in the CAIR trading program.

The CAIR FIPs established the budgets for Ohio as 108,667 tons for $NO_X$ annual emissions, 45,664 tons for $NO_X$ ozone season emissions, and 333,520 tons for $SO_2$ emissions. The Ohio SIP revision, approved in today's action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

### *B. CAIR Cap-and-Trade Programs*

The CAIR $NO_X$ annual and ozone-season FIPs both largely mirror the structure of the $NO_X$ SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the $NO_X$ annual and ozone-season FIPs are similar, there are some differences. For example, the $NO_X$ annual FIP (but not the $NO_X$ ozone season FIP) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of $NO_X$ annual emissions. As a further example, the $NO_X$ ozone season FIP reflects the fact that the CAIR $NO_X$ ozone season trading program replaces the $NO_X$ SIP Call trading program after the 2008 ozone season and is coordinated with the $NO_X$ SIP Call program. The $NO_X$ ozone season FIP provides incentives for early emissions reductions by allowing banked, pre-2009 $NO_X$ SIP Call allowances to be used for compliance in the CAIR $NO_X$ ozone-season trading program. In addition, States have the option of continuing to meet their $NO_X$ SIP Call requirement by participating in the CAIR $NO_X$ ozone season trading program and including all their $NO_X$ SIP Call trading sources in that program.

The provisions of the CAIR $SO_2$ FIP are also similar to the provisions of the $NO_X$ annual and ozone season FIPs. However, the $SO_2$ FIP is coordinated with the ongoing Acid Rain $SO_2$ cap-and-trade program under CAA title IV. The $SO_2$ FIP uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR $SO_2$ cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR $SO_2$ cap-and-trade program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model $SO_2$, $NO_X$ annual, and $NO_X$ ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated $SO_2$, $NO_X$ annual, and $NO_X$ ozone season trading programs.

Ohio is subject to the CAIR FIPs concerning $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions, and the CAIR FIP trading programs for $SO_2$, $NO_X$ annual, and $NO_X$ ozone season apply to sources in Ohio. Consistent with the flexibility they give to States, the CAIR FIPs provide that States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The Ohio EPA September 26, 2007, submission is such an abbreviated SIP revision.

### *C. Applicability Provisions for Non-EGU $NO_X$ SIP Call Sources*

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR $NO_X$ ozone season program only, those units in the State's $NO_X$ SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304 and add the applicability provisions in the State's $NO_X$ SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR $NO_X$ ozone season trading program all units required to be in the State's $NO_X$ SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR $NO_X$ ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e. units serving a generator with a nameplate capacity of 25 MWe or less), that the State currently requires to be in the $NO_X$ SIP Call trading program.

Consistent with the flexibility given to States in the CAIR FIP Ohio has not chosen, in the abbreviated CAIR SIP approved here, to expand the applicability provisions of the CAIR $NO_X$ ozone season trading program to include all non-EGUs in the State's $NO_X$ SIP Call trading program. However, EPA notes that Ohio has indicated that the full SIP revision submitted on September 26, 2007, expands the applicability provisions of CAIR $NO_X$ ozone season trading program in this manner. As such, EPA is not taking final

action on the non-EGU portion of the State's September 26, 2007, full CAIR SIP revision. The full CAIR SIP revision including actions to approve the non-EGU portions of the State's CAIR rule will be the subject of a separate future action.

*D. $NO_X$ Allowance Allocations*

Under the $NO_X$ allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, $NO_X$ annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides States the flexibility to establish a different $NO_X$ allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative $NO_X$ allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and/or
4. The use of allowance set-asides and, if used, the size of the set-aside.

Consistent with the flexibility given to States in the CAIR FIPs, Ohio has chosen to replace the provisions of the CAIR $NO_X$ annual FIP concerning the allocation of $NO_X$ annual allowances with its own methodology. Ohio has chosen to distribute $NO_X$ annual allowances based upon heat input data from a three year period adjusted for fuel type by using fuel adjustment factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. Based on this methodology, Ohio determined $NO_X$ allocations for EGUs in the State under the CAIR FIP, and submitted its allocations to EPA on April 24, 2007.

Ohio also has included, in the abbreviated SIP revision, provisions regarding set-aside programs for energy efficiency/renewable energy and innovative technology projects under the CAIR $NO_X$ Ozone Season program. The State's energy-efficiency/renewable energy (EE/RE) and innovative technology set-aside program provisions establish two set-asides for each control period, one set-aside for EE/RE projects and one set-aside for innovative technology projects, and specify procedures for allocating the allowances in the set-asides. Each set-aside is limited to one percent of the state trading budget for $NO_X$ ozone season allowance allocations. Beginning with the end of 2009 and every three years thereafter, Ohio EPA will review the number of allowances allocated from the set-asides and will, under certain circumstances, increase the size of each set-aside in future years as necessary, up to a maximum of five percent of the state trading budget.

EPA notes that the set-aside provisions do not explicitly state how allowances will be reserved in the set-asides if the total amount of allowances requested from a set-aside exceeds the total amount of allowances in that set-aside. However, set-aside provisions explicitly limit the amount of allowances available from each set-aside to one percent of the state trading budget unless Ohio EPA expands the set-asides in future years. In addition, Ohio informed EPA, in the September 26, 2007, letter, that its guidance for the set-asides provides that set-aside allowances will be reserved on a pro-rata basis if the total requested allowances exceed the size of the set-aside. Ohio has indicated that it will clarify its set-aside provisions consistent with this guidance.

The set-aside provisions also do not explicitly state how a set-aside will be increased up to five percent of the state trading budget if the existing set-aside amounts plus the total amounts allocated to units with and without baseline heat input under Ohio's other allocation provisions for $NO_X$ ozone season allowances already equal the state trading budget. However, Ohio's CAIR $NO_X$ ozone season allocation provisions clearly limit the total allocations for each control period of CAIR $NO_X$ ozone season allowances to the amount of the state trading budget for that control period. Further, as written, the provisions for expanding the set-asides cannot have any effect on the current allocations, which Ohio has already submitted to the Administrator for phase 1 of the trading program. In addition, Ohio informed EPA, in the September 28, 2007, letter, that Ohio EPA will reduce the total amount of allowances allocated to existing units under the other allocation provisions to the extent the size of a set-aside is increased in the future. Ohio has indicated that it will clarify its allocation provisions consistent with this statement in the September 28, 2007, letter.

Consequently, EPA interprets Ohio's abbreviated SIP to limit the total allocations for each control period of CAIR $NO_X$ ozone season allowances (whether from current or expanded set-asides or under the other allocation provisions in the abbreviated SIP) to the state trading budget, consistent with the requirements of 40 CFR 51.123(ee)(2)(ii)(B).

*E. Allocation of $NO_X$ Allowances From the Compliance Supplement Pool (CSP)*

The CSP provides an incentive for early reductions in $NO_X$ annual emissions. The CSP consists of 200,000 CAIR $NO_X$ annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the State's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make $NO_X$ reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR $NO_X$ annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those States.

Consistent with the flexibility given to States in the FIP, Ohio has chosen to modify the provisions of the CAIR $NO_X$ annual FIP concerning the allocation of allowances from the CSP. Ohio has chosen to distribute CSP allowances using an allocation methodology that provides more certainty to unit owners and operators that a known quantity of allowances per unit will be available for distribution at the beginning of the control period. Ohio also provides owners and operators with an incentive for the operation of expensive post-combustion control equipment year-round and provides incentives for early reductions in emissions before 2009. Ohio EPA is required to submit allocations from the CSP to the Administrator by July 1, 2009, or such time when unit's 2008 emissions data are available so that the allocations can be determined. Ohio's abbreviated SIP also states that the Administrator will record the allocations by January 1, 2010. While Ohio's abbreviated SIP does not explicitly state that allocations will be submitted to the Administrator by

November 30, 2009, EPA notes that units' 2008 emissions data should certainly be available before that date and that the allocations need to be submitted by that date in order to ensure that the Administrator will complete recordation of allowances by January 1, 2010. Further, Ohio has indicated, in the September 26, 2007, letter, that it will clarify its CSP provisions to provide for a deadline of November 30, 2009, for submission of CSP allocations to the Administrator. Consequently, EPA considers the Ohio abbreviated SIP to meet the requirements of 40 CFR 51.123(p)(2).

*F. Individual Opt-in Units*

The opt-in provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a State only if the State's abbreviated SIP revision adopts the opt-in provisions. The State may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The State also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the State without the ability for units to opt into the program.

Consistent with the flexibility given to States in the FIPs, Ohio has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR $NO_X$ annual trading program, the CAIR $NO_X$ ozone season trading program and the CAIR $SO_2$ trading program. Ohio EPA submitted the CAIR SIP program rules, OAC 3745–109–08 and OAC 3745–109–14 and OAC 3745–109–21, which incorporate the opt-in provisions as provided in the final EPA CAIR rule of April 28, 2006. These rules address opt-ins for $NO_X$ ozone season, $NO_X$ annual, and $SO_2$ annual programs.

## VI. Final Action

EPA is approving the rules contained in Ohio's abbreviated CAIR SIP revision submitted on September 26, 2007. Ohio is covered by the CAIR FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade programs for $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions. Under this abbreviated SIP revision, and consistent with the flexibility given to States in the FIPs, Ohio adopts provisions for allocating allowances under the CAIR FIP $NO_X$ annual and ozone season trading programs. In addition, Ohio adopts in the abbreviated SIP revision provisions that establish a methodology for allocating allowances in the CSP and allow for individual non-EGUs to opt into the CAIR FIP $SO_2$, $NO_X$ annual, $NO_X$ ozone season cap-and-trade programs. As provided for in the CAIR FIPs, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIPs in Ohio. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to $NO_X$ annual and $NO_X$ ozone season emissions, and 40 CFR 51.124(r), with regard to $SO_2$ emissions. EPA is not making any changes to the CAIR FIPs, but is amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

## VII. Statutory and Executive Order Reviews

*Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

*Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

*Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

*Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal Standard.

*National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 97*

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 28, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons set forth in the preamble, parts 52 and 97 of chapter 1 of title 40 of the Code of Federal Regulations are amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart KK—Ohio

■ 2. In § 52.1870 is amended by adding paragraph (c)(140) to read as follows:

**§ 52.1870 Identification of plan.**

* * * * *

(c) * * *

(140) Ohio Environmental Protection Agency submitted amendments on September 26, 2007, to the State Implementation Plan to control emissions from electric generating units (EGU). Rules affecting these units include: Ohio Administrative Code (OAC) 3745–109–01 (B)(59) and (72), 3745–109–04, 3745–109–08, 3745–109–14, 3745–109–17 (except the following: the language in paragraph (A) referencing the state trading budget for non-EGUs in 3745–109–17–01(C)(4), paragraphs (C)(1)(a)(i)(d), (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), and the language in paragraph (C)(3)(a) referencing non-EGUs), and 3745–109–21.

(i) *Incorporation by reference.* The following sections of the Ohio Administrative Code (OAC) are incorporated by reference.

(A) OAC 3745–109–01(B)(59) ''Energy efficiency/renewable energy project''; OAC 3745–109–01(B)(72) ''Innovative technology project''; OAC 3745–109–04 ''CAIR $NO_X$ allowance allocations''; OAC 3745–109–08 ''CAIR $NO_X$ opt-in units''; OAC 3745–109–14 ''CAIR $SO_2$ opt-in units''; and OAC 3745–109–21 ''CAIR $NO_X$ ozone season opt-in units''; effective on September 27, 2007.

(B) OAC 3745–109–17 ''CAIR $NO_X$ ozone season allowance allocations''; effective on September 27, 2007, except the following: the language in paragraph (A) referencing the state trading budget for non-EGUs in 3745–109–17–01(C)(4), paragraphs (C)(1)(a)(i)(d), (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), and the language in paragraph (C)(3)(a) referencing non-EGUs.

## PART 97—[AMENDED]

■ 3. The authority citation for part 97 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 4. Appendix A to subpart EE is amended by adding in alphabetical order the entry ''Ohio'' under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations**

1. * * *

Ohio

* * * * *

2. * * *

Ohio

* * * * *

■ 5. Appendix A to subpart II is amended by adding in alphabetical order the entry ''Ohio'' under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR $NO_X$ Opt-In Units**

1. * * *

Ohio

* * * * *

2. * * *

Ohio

* * * * *

■ 6. Appendix A to subpart III of part 97 is amended by adding in alphabetical order the entry ''Ohio'' under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart III of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR $SO_2$ Opt-In Units**

1. * * *
Ohio
* * * * *
2. * * *
Ohio
* * * * *

■ 7. Appendix A to subpart EEEE of part 97 is amended by adding in alphabetical order the entry ''Ohio'' to read as follows:

**Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations**

* * * * *
Ohio
* * * * *

■ 8. Appendix A to subpart IIII of part 97 is amended by adding in alphabetical order the entry ''Ohio'' under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart IIII of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR $NO_X$ Ozone Season Opt-In Units**

1. * * *
Ohio
2. * * *
Ohio
* * * * *

[FR Doc. E7–20252 Filed 10–15–07; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground. Modified | Communities affected |
|---|---|---|---|
| **Breathitt County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–7714** | | | |
| North Fork Kentucky River ..... | Approximately 7.43 miles downstream of the confluence with Frozen Creek near Cy Bend. | +717 | Breathitt County (Unincorporated Areas), City of Jackson. |
| | Approximately 2.83 miles upstream of the Robinson Road Bridge at Quick Sand. | +754 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground. Modified | Communities affected |
|---|---|---|---|
| PanBowl Lake | Kentucky 15 Crossing | +732 | Breathitt County (Unincorporated Areas), City of Jackson. |
| | Kentucky 1812 Crossing | +732 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**City of Jackson**

Maps are available for inspection at 1137 Main Street, Jackson, KY 41339.

**Breathitt County (Unincorporated Areas)**

Maps are available for inspection at 1137 Main Street, Jackson, KY 41339.

**Osage County, Oklahoma, and Incorporated Areas Docket No.: FEMA–B–7714**

| | | | |
|---|---|---|---|
| Bird Creek | Approximately 5,250 feet upstream from power line right-of-way. | +646 | Osage County (Unincorporated Areas). |
| | Approximately 8750 feet upstream from power line right-of-way. | +648 | |
| Eliza Creek | Approximately 4,000 ft upstream from CR–2708 | +695 | City of Bartlesville. |
| | Approximately 750 feet southwest intersection of Highway 60 and Highway 123. | +702 | |
| Euchee Creek | Approximately 8,250 feet downstream from confluence with Euchee Creek/Tributary (County Boundary). | +690 | Osage County (Unincorporated Areas). |
| | Approximately 2,000 feet upstream of Unnamed Dirt Road | +791 | |
| Tributary | Confluence with Euchee Creek | +700 | Osage County (Unincorporated Areas). |
| | Approximately 1050 feet upstream of intersection with North Willow Creek Road. | +720 | |
| Shell Creek | Approximately 1,600 feet downstream of North 161 St. West Avenue. | +661 | Osage County (Unincorporated Areas). |
| | Confluence with UT 3 Shell Creek | +677 | |
| UT 1 to Shell Creek | Confluence with Shell Creek | +668 | Osage County (Unincorporated Areas). |
| | Approximately 1820 feet upstream of Private Road | +805 | |
| UT 1 to UT to Horsepin Creek | Approximately 3000 feet south of intersection of 166th Street and Railroad. | +638 | Osage County (Unincorporated Areas). |
| | Approximately 375 feet south of intersection of 166th Street and Railroad. | +644 | |
| UT 3 to Shell Creek | Confluence with Shell Creek | +677 | Osage County (Unincorporated Areas). |
| | Approximately 500 ft down stream of Shell Lake Dam | +693 | |
| UT 4 to Shell Creek | Confluence with Shell Creek | +668 | Osage County (Unincorporated Areas). |
| | Approximately 4000 feet of confluence with Shell Creek | +673 | |
| UT to West Big Heart Creek | 4,000 feet downstream of mouth of creek (County Line) | +695 | City of Sand Springs. |
| | 2,750 feet downstream of mouth of creek | +790 | |
| West Big Heart Creek (Formerly Blackboy Creek). | Approximately 10,500 feet downstream of mouth of creek (County Line). | +722 | Osage County (Unincorporated Areas). |
| | Approximately 8,000 feet downstream of mouth of creek | +793 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**City of Bartlesville**

Maps are available for inspection at 401 South Johnston Ave, Bartlesville, OK 74003.

**City of Sand Springs**

Maps are available for inspection at P.O. Box 338, Sand Springs, OK 74063.

**Osage County (Unincorporated Areas)**

Maps are available for inspection at 628 Kinekah, Pawhuska, OK 74056–0087.

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified | Communities affected |
|---|---|---|---|
| **Osage County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–7456** | | | |
| Bird Creek | Approximately 250 feet from confluence of Bird Creek and Mud Creek. | +818 | Osage County (Unincorporated Areas), City of Pawhuska, City of Barnsdall, Town of Avant. |
| | Approximately 1,700 feet downstream from confluence w/ UT1 to Bird Creek. | +645 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**Osage County**

Maps are available for inspection at 628 Kihekah, Pawhuska 74056.

**Town of Avant**

Maps are available for inspection at City Hall: 230 W. McCoy Lane, Avant, OK 74001.

**City of Barnsdall**

Maps are available for inspection at 409 W. Main, Barnsdall, OK 74002.

**City of Pawhuska**

Maps are available for inspection at 118 W. Main, Pawhuska, OK 74056.

| | | | |
|---|---|---|---|
| **Lincoln County, South Dakota, and Incorporated Areas Docket No: FEMA–B–7708 & B–7735** | | | |
| Ninemile Creek | Just downstream from 274th Street | +1385 | Town of Harrisburg. |
| | Just upstream from 272nd Street | +1472 | Town of Tea. |
| | Approximately 320 feet downstream from Kevin Drive | +1477 | |
| | Approximately 650 feet upstream from Ryan Drive | +1483 | |
| | Just downstream from 273rd Street | +1311 | Unincorporated Areas of Lincoln County. |
| | Just upstream from South Dakota Highway 115 | +1411 | |
| | 1550 feet upstream from 469th Avenue | +1518 | |
| Tributary | Approximately 2150 feet downstream from 475th Avenue | +1391 | Town of Harrisburg. |
| | Approximately 500 feet downstream from 475th Avenue at the Corporate Limit line. | +1400 | |
| | Just downstream from 273rd Street | +1417 | |
| Tributary | Just upstream from the confluence with Ninemile Creek | +1387 | Unincorporated Areas of Lincoln County. |
| | Approximately 2050 feet upstream from 273rd Street | +1425 | |
| | Just downstream from 473rd Avenue | +1466 | |
| Schindler Creek | Just upstream from the confluence with Ninemile Creek | +1267 | Unincorporated Areas of Lincoln County. |
| | Just downstream from 477th Avenue | +1394 | |
| | Approximately 1150 feet upstream from 271st Street | +1452 | |
| Spring Creek | Just upstream from the confluence with Big Sioux River | +1269 | Unincorporated Areas of Lincoln County. |
| | Just downstream from South Dakota Highway 11 | +1368 | |
| | Approximately 950 feet upstream from Cliff Avenue | +1461 | |
| Tributary | Just upstream from the confluence with Spring Creek | +1346 | Unincorporated Areas of Lincoln County. |
| | Just downstream from Cody Road | +1392 | |
| | Just upstream from 269th Street | +1425 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**Town of Harrisburg**

Maps are available for inspection at P.O. Box 26, Harrisburg, SD 57032.

**Town of Tea**

Maps are available for inspection at 600 East 1st Street, P.O. Box 128, Tea, SD 57064.

**Unincorporated Areas of Lincoln County**

Maps are available for inspection at 224 West Ninth Street, Sioux Falls, SD 57104.

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified | Communities affected |
|---|---|---|---|
| **Webb County, Texas and Incorporated Areas Docket No.: FEMA–B–7710** | | | |
| Chacon Creek | Confluence with Rio Grande | +394 | City of Laredo, Webb County, (Unincorporated Areas). |
| | Approximately 2000 feet downstream from confluence with Casa Blanca Lake. | +453 | |
| Tributary 1 | Confluence with Chacon Creek | +394 | City of Laredo. |
| | Approximately 250 feet upstream from intersection with Chestnut. | +422 | |
| Tributary 2 | Confluence with Chacon Creek | +394 | City of Laredo, Webb County (Unincorporated Areas). |
| | Approximately 1500 feet downstream from Loop 20 | +398 | |
| Tributary 3 | Confluence with Chacon Creek | +436 | City of Laredo, Webb County (Unincorporated Areas). |
| | Approximately 2500 feet upstream from the intersection with Highway 59. | +444 | |
| Deer Creek | Confluence with Rio Grande | +411 | City of Laredo. |
| | Intersection with Logistic Road | +476 | |
| Dellwood Tributary (Previously Las Manadas Creek Tributary 1). | Confluence with Las Manadas Creek | +410 | City of Laredo, Webb County (Unincorporated Areas). |
| | Approximately 2000 feet upstream from intersection with FM 3464. | +486 | |
| Las Manadas Creek | Confluence with Rio Grande | +408 | City of Laredo, Webb County (Unincorporated Areas). |
| | Approximately 1750 feet upstream from intersection with Loop 20. | +552 | |
| Tributary 1 | Confluence with Las Manadas Creek | +412 | City of Laredo, Webb County (Unincorporated Areas). |
| | Approximately 200 feet upstream from Springfield Drive | +468 | |
| Tributary 1A | Confluence with Las Manadas Creek Tributary 1 | +430 | City of Laredo. |
| | Approximately 1200 feet upstream from Dover/Stratford | +464 | |
| Tributary 2 (Formerly Las Manadas Creek Tributary 3). | Confluence with Las Manadas Creek | +418 | City of Laredo, Webb County (Unincorporated Areas). |
| | Approximately 5050 feet upstream from intersection with FM 3464. | +489 | |
| Tributary 2A | Confluence with Las Manadas Creek Tributary 2 | +447 | City of Laredo. |
| | Approximately 3225 feet upstream from confluence with Las Manadas Creek Tributary 2. | +459 | |
| Rio Grande | Approximately 1750 feet upstream from intersection with Riverhill Road. | +391 | City of Laredo, Webb County (Unincorporated Areas). |
| | Confluence with Deer Creek | +411 | |
| Tex-Mex Railroad | Confluence with Chacon Creek | +400 | City of Laredo, Webb County (Unincorporated Areas). |
| Tributary | Approximately 1250 feet upstream from intersection with Tex-Mex Railroad. | +423 | |
| Zacate Creek | Approximately 250 feet downstream from the intersection with Mexican Railroad. | +396 | City of Laredo. |
| | Confluence with Rio Grande | +399 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**City of Laredo**

Maps are available for inspection at 1120 San Bernardo, Laredo, TX 78042.

**Webb County (Unincorporated Areas)**

Maps are available for inspection at 1110 Washington Street, Suite 302, Laredo, TX 78040.

| **Columbia County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–7708** | | | |
|---|---|---|---|
| Baraboo River | At confluence with the Wisconsin River | *790 | Columbia County (Unincorporated Areas). |
| | Downstream side of Interstate 90 | *796 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground. Modified | Communities affected |
|---|---|---|---|
| Duck Creek | Upstream side of U.S. Highway 51 | *791 | Columbia County (Unincorporated Areas). |
| | Upstream side of Chicago Milwaukee St. Paul and Pacific Railroad. | *791 | |
| Fox River | At downstream county boundary between Columbia and Marquette counties. | *779 | City of Portage, Columbia County (Unincorporated Areas). |
| | Downstream side of Chicago Milwaukee St. Paul and Pacific Railroad. | *785 | |
| Neenah Creek | Downstream side of County Highway CM | *781 | Columbia County (Unincorporated Areas). |
| | At confluence with Big Slough | *790 | |
| Spring Creek | Approximately ½ mile downstream of Fair Street | *805 | City of Lodi. |
| | Upstream side of Riddle Road | *834 | |
| Tributary A | At confluence with Spring Creek | *821 | City of Lodi. |
| | Approximately 1,300 feet upstream of Spring Street | *821 | |
| Wisconsin River | Downstream side of State Highway 60 | *748 | City of Portage, City of Wisconsin Dells, Columbia County (Unincorporated Areas). |
| | Upstream side of Interstate 39 | *798 | |
| | At upstream county boundary between Columbia and Adams counties. | *848 | |

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

**ADDRESSES**

**Columbia County (Unincorporated Areas)**

Maps are available for inspection at: Columbia County Planning and Zoning Department, 400 DeWitt St., Portage, WI 53901.

**City of Lodi**

Maps are available for inspection at: City Clerk's Office, 130 S. Main St., Lodi, WI 53555.

**City of Portage**

Maps are available for inspection at: City Hall, 115 W. Pleasant St., Portage, WI 53901.

**City of Wisconsin Dells**

Maps are available for inspection at: City Hall, 300 La Crosse St., Wisconsin Dells, WI 53965.

**La Crosse County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–7707**

| | | | |
|---|---|---|---|
| Black River | At confluence with the Black River, Mississippi River and La Crosse River. | *644 | City of Onalaska, City of La Crosse, La Crosse County (Unincorporated Areas). |
| | Just upstream of Lock & Dam 7 | *646 | |
| Ebner Coulee | 100 feet south of Jackson St | *658 | City of La Crosse, La Crosse County (Unincorporated Areas). |
| | Just east of 29th St. | *667 | |
| Pond 1 | Just east of 29th St | *633 | City of La Crosse. |
| | At Burlington Northern Railroad | *663 | |
| Pond 2 | At State Road | *656 | City of La Crosse. |
| | At Farnam Street | *656 | |
| Pond 3 | At State Road | *655 | City of La Crosse. |
| | At 200 feet north of Crestline Place | *655 | |
| Pond 4 | 500 feet south of Evergreen St | *652 | City of La Crosse. |
| | 150 feet north of Evergreen St | *652 | |
| Pond 5 | At Ward Avenue | *652 | City of La Crosse. |
| | At Travis Street | *653 | |
| Pond 6 | 600 feet south of East Fairchild Street | *654 | City of La Crosse. |
| | 600 feet north of West Fairchild Street | *654 | |
| Pond 7 | At Farnam Street | *658 | City of La Crosse. |
| | At Jackson Street | *658 | |
| Johns Coulee | At mouth at Mormon Creek | *725 | La Crosse County (Unincorporated Areas). |
| | Approximately 1 mile upstream of County Highway YY bridge. | *827 | |
| La Crosse River | Approximately 600 feet upstream of Highway 53 | *644 | City of Onalaska, City of La Crosse, La Crosse County (Unincorporated Areas). |
| | Overbank area between Goheres St. to the north and Monitor St. to the south. | *645 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground. Modified | Communities affected |
|---|---|---|---|
| | At State Highway 16 | *655 | |
| Left Overbank | Southern extent near La Crosse St | *644 | City of La Crosse. |
| | At Lang Drive | *645 | |
| Right Overbank 1 | Railroad just north of County Highway B | *649 | City of La Crosse. |
| | At Hawkins Road | *653 | |
| Railroad Ditch | At mouth at confluence with La Crosse River | *650 | City of La Crosse. |
| | Upstream extent at divergence at La Crosse River | *655 | |
| Mormon Creek | At mouth at Mississippi River | *639 | La Crosse County (Unincorporated Areas). |
| | At County Highway M | *766 | |
| Mississippi River | Adjacent to Marion Road N at river mile 694 | *640 | City of La Crosse, City of Onalaska, La Crosse County (Unincorporated Areas). |
| | Approximately 3.6 miles south of Highway 35 at river mile 711. | *649 | |
| Pammel Creek | At mouth at Mississippi River | *640 | City of La Crosse, La Crosse County (Unincorporated Areas). |
| | 150 feet upstream of Hagen Road | *683 | |
| Pammel Creek East Bank | At Juniper Street | *644 | City of La Crosse, La Crosse County (Unincorporated Areas). |
| | At Leonard Street | *644 | |
| | At Meadow Lane Place | *647 | |
| | Adjacent to Easter Road | *647 | |
| | At Park Lane Drive | *653 | |
| | At Midway between Park Lane Drive & Ward Avenue | *653 | |
| Sand Lake Coulee | 200 feet downstream of County Highway OT | *650 | Village of Holmen, City of Onalaska, La Crosse County (Unincorporated Areas). |
| | At Private driveway ¼ mile north of Abnet Rd | *770 | |
| Right Overbank—Midway | At mouth at confluence with Sand Lake Coulee | *652 | Village of Holmen, La Crosse County (Unincorporated Areas). |
| | Approximately 1200 feet downstream of State Highway 35 | *663 | |
| Right Overbank—Golf Course. | At County Highway SN | *701 | Village of Holmen, City of Onalaska, La Crosse County (Unincorporated Areas). |
| | Golf Course boundary 0.5 mi. downstream of Moos Rd | *721 | |
| Smith Valley Creek | At mouth at La Crosse River | *658 | City of Onalaska, City of La Crosse, La Crosse County (Unincorporated Areas). |
| | End of Smith Valley Road | *814 | |
| State Road Coulee | 150 feet upstream of Hagen Rd | *683 | La Crosse County (Unincorporated Areas). |
| | 600 feet upstream of Hagen Rd. | *687 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**La Crosse County (Unincorporated Areas)**

Maps are available for inspection at: La Crosse County Zoning, Planning and Land Information Office, 400 4th St. N, La Crosse, WI 54601.

**Village of Holmen**

Maps are available for inspection at: Village Hall, 421 S. Main St., Holmen, WI 54636–0158.

**City of La Crosse**

Maps are available for inspection at: City Hall, 400 La Crosse St., La Crosse, WI 54601.

**City of Onalaska**

Maps are available for inspection at: City Hall, 415 Main St., Onalaska, WI 54650.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 9, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E7–20384 Filed 10–15–07; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 070213032–7032–01]**

**RIN 0648–XD36**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for the 2007 Pacific cod sideboard limits apportioned to non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 11, 2007, until 2400 hrs, A.l.t., December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 800.

The 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 979 metric tons (mt) for the GOA, as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 969 mt in the Gulf of Alaska. The remaining 10 mt in the Gulf of Alaska will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 10, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 10, 2007.

**Emily H. Menashes**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 07–5100 Filed 10–11–07; 1:40 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 72, No. 199
Tuesday, October 16, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM378 Special Conditions No. 25–07–11–SC]**

## Special Conditions: Boeing Model 787–8 Airplane; Operation Without Normal Electrical Power

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The Boeing Model 787–8 airplane will have numerous electrically operated systems whose function is needed for continued safe flight and landing of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

**DATES:** Comments must be received on or before November 15, 2007.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM378, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM378. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, FAA, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2315; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

### Background

On March 28, 2003, Boeing applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

### Type Certification Basis

Under provisions of Title 14 Code of Federal Regulations (CFR) 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as ''the 787'') meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except §§ 25.809(a) and 25.812, which will remain at Amendment 25–115. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

### Novel or Unusual Design Features

The 787 will incorporate a number of novel or unusual design features, some of which have not been previously installed on large commercial aircraft. Because of these design features, these proposed special conditions differ from similar previously proposed special conditions for other airplane models. Due to rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions for the 787 contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to

that established by the existing airworthiness standards.

In addition to an electronic flight control system, a number of systems that have traditionally been pneumatically or mechanically operated have been implemented as electrically powered systems on the 787. Examples include the hydraulic power, equipment cooling, wing anti-ice, and the auxiliary power unit (APU) and engine start systems. The criticality of some of these systems is such that their failure will either reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or prevent continued safe flight and landing of the airplane. The airworthiness standards of part 25 do not contain adequate or appropriate standards for protection of these systems from the adverse effects of operation without normal electrical power.

The current rule, 14 CFR 25.1351(d), Amendment 25–72, requires safe operation under visual flight rules (VFR) conditions for at least five minutes after loss of all normal electrical power. This rule was structured around traditional airplane designs that used mechanical control cables and linkages for flight control. These manual controls allowed the crew to maintain aerodynamic control of the airplane for an indefinite period of time after loss of all electrical power. Under these conditions, the mechanical flight control system provided the crew with the ability to fly the airplane while attempting to identify the cause of the electrical failure, start the engine(s) if necessary, and reestablish some of the electrical power generation capability, if possible.

To maintain the same level of safety associated with traditional designs, the 787 must be designed for operation with the normal sources of engine- and auxiliary-power-unit (APU)-generated electrical power inoperative. Service experience has shown that loss of all electrical power from the airplane's engine- and APU-driven generators is not extremely improbable. Thus, Boeing must demonstrate that the airplane is capable of recovering adequate primary electrical power generation for safe flight and landing. This demonstration would provide that the ability to restore operation of portions of the electrical power generation capability would be considered if unrecoverable loss of those portions is shown to be extremely improbable. An alternative source of electrical power would have to be provided for the time necessary to restore the minimum power generation capability necessary for safe flight and landing.

**Applicability**

As discussed above, these proposed special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well under the provisions of § 21.101.

**Conclusion**

This action would affect only certain novel or unusual design features of the 787. It is not a rule of general applicability, and it would affect only the applicant that applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these Special Conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

Accordingly, the Administrator of the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787–8 airplane.

In lieu of the requirements of 14 CFR 25.1351(d), the following special conditions apply:

(1) The applicant must show by test or a combination of test and analysis that the airplane is capable of continued safe flight and landing with all normal sources of engine- and auxiliary-power-unit (APU)-generated electrical power inoperative, as prescribed by paragraphs (1)(a) and (1)(b) below. For purposes of this special condition, normal sources of electrical power generation do not include any alternate power sources such as the battery, ram air turbine (RAT), or independent power systems such as the flight control permanent magnet generating system. In showing capability for continued safe flight and landing, consideration must be given to systems capability, effects on crew workload and operating conditions, and the physiological needs of the flightcrew and passengers for the longest diversion time for which approval is sought.

(a) Common cause failures, cascading failures, and zonal physical threats must be considered in showing compliance with this requirement.

(b) In showing compliance with this requirement, the ability to restore operation of portions of the electrical power generation and distribution system may be considered if it can be shown that unrecoverable loss of those portions of the system is extremely improbable. An alternative source of electrical power must be provided for the time required to restore the minimum electrical power generation capability required for safe flight and landing. (Unrecoverable loss of all engines may be excluded when showing that unrecoverable loss of critical portions of the electrical system is extremely improbable.)

(2) Regardless of any electrical generation and distribution system recovery capability shown under paragraph 1, sufficient electrical system capability must be provided—

(a) to allow time to descend, with all engines inoperative, at the speed that provides the best glide slope, from the maximum operating altitude to the altitude at which the soonest possible engine restart could be accomplished, and

(b) to subsequently allow multiple start attempts of the engines and APU. This capability must be provided in addition to the electrical capability required by existing part 25 requirements related to operation with all engines inoperative.

(3) The electrical energy used by the airplane in descending with engines inoperative from the maximum operating altitude at the best glide slope, and in making multiple attempts to start the engines and APU, must be considered when showing compliance with paragraphs (1) and (2) of these special conditions and with existing 14 CFR part 25 requirements related to continued safe flight and landing.

Issued in Renton, Washington, on October 5, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–20310 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–29011; Airspace Docket No. 07–AAL–14]**

## Proposed Revision of Class D and E Airspace; Kenai, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class D and E airspace at Kenai, AK.

Five Standard Instrument Approach Procedures (SIAPs) are being amended for the Kenai Municipal Airport at Kenai, AK. Additionally, one textual departure procedure (DP) is being amended. Adoption of this proposal would result in revision of existing Class D & E airspace upward, from the surface, from 700 feet (ft.) and 1,200 ft. above the surface, at the Kenai Municipal Airport, Kenai, AK.

**DATES:** Comments must be received on or before November 30, 2007.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–29011/ Airspace Docket No. 07–AAL–14, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29011/Airspace Docket No. 07–AAL–14.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemaking's (NPRM's)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Kenai Municipal Airport, in Kenai, AK. The intended effect of this proposal is to revise Class E airspace upward, from the surface, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Kenai Municipal Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended five SIAPs and one DP for the Kenai Municipal Airport. The amended approaches are (1) the Very High Frequency Omni-directional Range (VOR) Runway (RWY) 19R, Amendment (Amdt) 18, (2) the Instrument Landing System (ILS) or Localizer (LOC) RWY 19R, Amdt 3, (3) the VOR/Distance Measuring Equipment (DME) RWY 01L, Amdt 7, (4) the Area Navigation (RNAV) Global Positioning System (GPS) RWY 01L, Amdt 1, and (5) the RNAV (GPS) RWY 19R, Amdt 1. Textual DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class D and E controlled airspace extending upward, from the surface, from 700 ft. and 1,200 ft. above the surface, in the Kenai Municipal Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Kenai Municipal Airport, Kenai, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class D airspace area designations are published in paragraph 5000 of FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E surface areas designated as extensions to Class D surface areas are published in paragraph 6004 in FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class D and E airspace sufficient in size to contain aircraft executing instrument procedures at Kenai Municipal Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 5000 General.*

* * * * *

**AAK AK D Kenai, AK [Revised]**

Kenai, Kenai Municipal Airport, AK
(Lat. 60°34′23″ N., long. 151°14′42″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.2-miles radius of the Kenai Municipal Airport, excluding the airspace below 1,100 feet MSL beyond 4 miles from the Kenai Municipal Airport extending from the 310° bearing clockwise to the 350° bearing from the Kenai Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.*

**AAK AK E4 Kenai, AK [Revised]**

Kenai, Kenai Municipal Airport, AK
(Lat. 60°34′23″ N., long. 151°14′42″ W.)
Kenai VOR/DME (Lat. 60°36′53″ N., long. 151°11′43″ W.)

That airspace extending upward from the surface within 3.7 miles each side of the 031° radial of the Kenai VOR/DME extending from the 5.2-mile radius of the Kenai Municipal Airport to 10.2 miles northeast of the Kenai Municipal Airport.

* * * * *

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Kenai, AK [Revised]**

Kenai, Kenai Municipal Airport, AK
(Lat. 60°34′23″ N., long. 151°14′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Kenai Municipal Airport and within 4 miles east and west of the 031° bearing from the Kenai Municipal Airport extending from the 7.3-mile radius to 11 miles north of the Kenai Municipal Airport; and that airspace extending upward from 1,200 feet above the surface within a 75-mile radius of the Kenai Municipal Airport.

* * * * *

Issued in Anchorage, AK, on October 5, 2007.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E7–20313 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2007–29100; Airspace Docket No. 07–AAL–16]**

## Proposed Revision of Class E Airspace; Soldotna, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Soldotna, AK. Two new Standard Instrument Approach Procedures (SIAPs) are being developed for the Soldotna Airport at Soldotna, AK. Adoption of this proposal would result in revision of existing Class E airspace upward, from 700 feet (ft.) and 1,200 ft. above the surface, at the Soldotna Airport, Soldotna, AK.

**DATES:** Comments must be received on or before November 30, 2007.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–29100/ Airspace Docket No. 07–AAL–16, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29100/Airspace Docket No. 07–AAL–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemaking's (NPRM's)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Soldotna Airport, in Soldotna, AK. The intended effect of this proposal is to revise Class E airspace upward, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Soldotna Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Soldotna Airport. The new approaches are (1) the Area Navigation (RNAV) Global Positioning System (GPS) RWY 07, Original (Orig) and (2) the RNAV (GPS) RWY 25, Orig. Class E controlled airspace extending upward, from 700 ft. and 1,200 ft. above the surface, in the Soldotna Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Soldotna Airport, Soldotna, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Soldotna Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Soldotna, AK [Revised]**

Soldotna, Soldotna Airport, AK
(Lat. 60°28′30″ N., long. 151°02′17″W.)
Soldotna NDB
(Lat. 60°28′30″ N., long. 150°52′44″W.)

That airspace extending upward from 700 feet above the surface within a 10.1-mile radius of the Soldotna Airport and within 4 miles either side of the 270 bearing of the Soldotna NDB, AK, extending from the 10.1-mile radius to 21 miles west of the Soldotna Airport, AK, and within 4.6 miles north and 4 miles south of the 090 bearing of the

Soldotna NDB, AK, extending from the 10.1-mile radius to 14.3 miles east of the Soldotna Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Soldotna Airport.

* * * * *

Issued in Anchorage, AK, on October 5, 2007.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E7–20308 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–29009; Airspace Docket No. 07–AAL–12]**

## Proposed Revision of Class E Airspace; Buckland, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Buckland, AK. Two Standard Instrument Approach Procedures (SIAPs) and a textual departure procedure (DP) are being amended for the Buckland Airport at Buckland, AK. Additionally, two new SIAPs are being developed. Adoption of this proposal would result in revision of existing Class E airspace upward, from 700 feet (ft.) and 1,200 ft. above the surface, at the Buckland Airport, Buckland, AK.

**DATES:** Comments must be received on or before November 30, 2007.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–29009/ Airspace Docket No. 07–AAL–12, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29009/Airspace Docket No. 07–AAL–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Buckland Airport, in Buckland, AK. The intended effect of this proposal is to revise Class E airspace upward, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Buckland Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended two SIAPs and a DP, and developed two SIAPs for the Buckland Airport. The amended approaches are (1) the Non-directional Beacon (NDB)/Distance Measuring Equipment (DME) Runway (RWY) 11, Amendment (Amdt) 1 and (2) the NDB/DME RWY 29, Amdt 1. The new approaches are (1) the Area Navigation (RNAV) Global Positioning System (GPS) RWY 02, Original (Orig) and (2) the RNAV (GPS) RWY 20, Orig. Textual DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward, from 700 ft. and 1,200 ft. above the surface, in the Buckland Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Buckland Airport, Buckland, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document

would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Buckland Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Buckland, AK [Revised]**

Buckland, Buckland Airport, AK
(Lat. 66°45′58″ N., long. 160°09′10″ W.)

That airspace extending upward from 700 feet above the surface within a 12.4-mile radius of the Buckland Airport; and that airspace extending upward from 1,200 feet above the surface within a 78-mile radius of the Buckland Airport.

* * * * *

Issued in Anchorage, AK, on October 5, 2007.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E7–20311 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–27998; Airspace Docket No. 07–AAL–05]**

## Proposed Revision of Class E Airspace; Selawik, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Selawik, AK. Two Standard Instrument Approach Procedures (SIAPs) are being amended for the Roland Norton Memorial Airport at Selawik, AK. Additionally, four new SIAPs and a textual departure procedure (DP) are being developed. Adoption of this proposal would result in revision of existing Class E airspace upward, from 700 feet (ft.) and 1,200 ft. above the surface, at the Roland Norton Memorial Airport, Selawik, AK.

**DATES:** Comments must be received on or before November 30, 2007.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–27998/ Airspace Docket No. 07–AAL–05, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27998/Airspace Docket No. 07–AAL–05.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will

be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemaking's (NPRM's)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Roland Norton Memorial Airport, in Selawik, AK. The intended effect of this proposal is to revise Class E airspace upward, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Roland Norton Memorial Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended two SIAPs and developed four SIAPs along with a DP for the Roland Norton Memorial Airport. The amended approaches are (1) the Very High Frequency Omni-directional Range (VOR) Runway (RWY) 04, Amendment (Amdt) 1 and (2) the VOR RWY 22, Amdt 1. The new approaches are (1) the Area Navigation (RNAV) Global Positioning System (GPS) RWY 04, Original (Orig), (2) the RNAV (GPS) RWY 27, 0rig, (3) the RNAV (GPS) Y RWY 22, Orig, and (4) the RNAV (GPS) Z RWY 22, Orig. Textual DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward, from 700 ft. and 1,200 ft. above the surface, in the Roland Norton Memorial Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Roland Norton Memorial Airport, Selawik, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Roland Norton Memorial Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Selawik, AK [Revised]**

Selawik, Roland Norton Memorial Airport, AK
(Lat. 66°45′58″ N., long. 160°09′10″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Roland Norton Memorial Airport; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Roland Norton Memorial Airport.

* * * * *

Issued in Anchorage, AK, on October 5, 2007.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E7–20312 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–29010; Airspace Docket No. 07–AAL–13]**

## Proposed Revision of Class E Airspace; Chevak, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Chevak, AK. Two new Standard Instrument Approach Procedures (SIAPs) are being developed for the Chevak Airport at Chevak, AK. Adoption of this proposal would result in revision of existing Class E airspace upward, from 700 feet (ft.) and 1,200 ft. above the surface, at the Chevak Airport, Chevak, AK.

**DATES:** Comments must be received on or before November 30, 2007.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–29010/ Airspace Docket No. 07–AAL–13, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29010/Airspace Docket No. 07–AAL–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemaking's (NPRM's)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Chevak Airport, in Chevak, AK. The intended effect of this proposal is to revise Class E airspace upward, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Chevak Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Chevak Airport. The new approaches are (1) the Area Navigation (RNAV) Global Positioning System (GPS) RWY 02, Original (Orig) and (2) the RNAV (GPS) RWY 20, 0rig. Class E controlled airspace extending upward, from 700 ft. and 1,200 ft. above the surface, in the Chevak Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Chevak Airport, Chevak, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E

airspace sufficient in size to contain aircraft executing instrument procedures at Chevak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Chevak, AK [Revised]**

Chevak, Chevak Airport, AK
(Lat. 61°32′27″N., long. 165°35′03″W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Chevak Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Chevak Airport.

* * * * *

Issued in Anchorage, AK, on October 5, 2007.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E7–20314 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–29012; Airspace Docket No. 07–AAL–15]**

## Proposed Revision of Class E Airspace; McGrath, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at McGrath, AK. Five Standard Instrument Approach Procedures (SIAPs) and a textual departure procedure (DP) are being amended for the McGrath Airport at McGrath, AK. Additionally, one new SIAP is being developed. Adoption of this proposal would result in revision of existing Class E airspace upward, from 700 feet (ft.) and 1,200 ft. above the surface, at the McGrath Airport, McGrath, AK.

**DATES:** Comments must be received on or before November 30, 2007.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–29012/ Airspace Docket No. 07–AAL–15, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29012/Airspace Docket No. 07–AAL–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemaking's (NPRM's)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the McGrath Airport, in McGrath, AK. The intended effect of this proposal is to revise Class E airspace upward, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at McGrath Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended five SIAPs and a DP, and developed one new SIAP for the McGrath Airport. The amended approaches are (1) the High Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) or Tactical Air Navigation (TACAN) Runway (RWY) 16, Amendment (Amdt) 1, (2) the VOR/DME or TACAN RWY 16, Amdt 1, (3) the VOR A, Amdt 8, (4) the VOR/DME C, Amdt 1 and (5) the Localizer (LOC)/DME RWY 16, Amdt 3. The new approach is the Area Navigation (RNAV) Global Positioning System (GPS) RWY 16, Original (Orig). Textual DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward, from 700 ft. and 1,200 ft. above the surface, in the McGrath Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the McGrath Airport, McGrath, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 in FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at McGrath Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**AAL AK E2 McGrath, AK [Revised]**

McGrath, McGrath Airport, AK
(Lat. 62°57′10″ N., long. 155°36′20″ W.)

That airspace within a 7.6-mile radius of the McGrath Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 McGrath, AK [Revised]**

McGrath, McGrath Airport, AK
(Lat. 62°57′10″ N., long. 155°36′20″ W.)

That airspace extending upward from 700 feet above the surface within a 8.1-mile radius of the McGrath Airport and within 4 miles north and 8 miles south of the 123° bearing from the McGrath Airport, AK extending from the 8.1-mile radius to 16 miles southeast of the McGrath Airport, AK, and within 4 miles east and west of the 008° bearing from the McGrath Airport, AK, extending from the 8.1-mile radius to 11.2 miles north of the McGrath Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the McGrath Airport.

* * * * *

Issued in Anchorage, AK, on October 5, 2007.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E7–20315 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2007–0376; FRL–8477–5]**

## Approval of Implementation Plans of Illinois: Clean Air Interstate Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) submitted on September 14, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR),

promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA is proposing to determine that the SIP revision fully implements the CAIR requirements for Illinois. As a consequence of the SIP approval, EPA would also withdraw the CAIR Federal Implementation Plans (CAIR FIPs) concerning $SO_2$, $NO_X$ annual, and $NO_X$ ozone season emissions for Illinois.

**DATES:** Comments must be received on or before November 15, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0376, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov*.

3. *Fax:* (312) 886–5824.

4. *Mail:* ''EPA–R05–OAR–2007–0376'', John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery or Courier:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 21, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E7–20144 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

**[EPA–R07–OAR–2007–0718; FRL–8482–9]**

### Approval and Promulgation of State Implementation Plans and Operating Permits Program; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Iowa State Implementation Plan (SIP) and Operating Permits Program submitted by the state of Iowa. These revisions update and clarify various rules and makes minor revisions and corrections. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the State's revised air program rules.

**DATES:** Comments on this proposed action must be received in writing by November 15, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0718 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: Hamilton.heather@epa.gov*.

3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule that is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision and Title V revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule that is located in the rules section of this **Federal Register**.

Dated: October 5, 2007.

**William Rice,**

*Acting Regional Administrator, Region 7.*

[FR Doc. E7–20377 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

**[EPA–R05–OAR–2007–0390; FRL–8481–3]**

### Approval and Promulgation of State Implementation Plans; Ohio: Clean Air Interstate Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing approval of a revision to the Ohio State Implementation Plan (SIP) submitted on April 17, 2007, as amended by letter on September 26, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA is proposing to determine that the Ohio SIP revision meets selected provisions of the Clean Air Interstate Rule Federal Implementation Plan emission reduction requirements under the $NO_X$ SIP Call and, as such, is approvable.

**DATES:** Comments must be received on or before November 15, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR–2007–0390, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* ''EPA–R05–OAR–2007–0390'', John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery or Courier:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays. Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084, *paskevicz.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 28, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E7–20251 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[EPA–R04–OAR–2007–0958–200744; FRL–8482–6]**

### Determination of Nonattainment and Reclassification of the Atlanta, GA, 8-Hour Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to find that the Atlanta, Georgia marginal 8-hour nonattainment ozone area has failed to attain the 8-hour ozone national ambient air quality standard (''NAAQS'' or ''standard'') by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA) and Code of Federal Regulations (CFR) for marginal nonattainment areas. If EPA finalizes this finding, the Atlanta, Georgia area will then be reclassified, by operation of law, as a moderate 8-hour ozone nonattainment area. The moderate area attainment date for the Atlanta, Georgia area would then be ''as expeditiously as practicable,'' but no later than June 15, 2010. Once reclassified, Georgia must submit a State Implementation Plan (SIP) revision that meets the 8-hour ozone nonattainment requirements for moderate areas, as required by the CAA. In this action, EPA is also proposing the schedule for Georgia's submittal of the SIP revision required for moderate areas once the area is reclassified.

**DATES:** Comments must be received on or before November 15, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0958, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2007–0958, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2007–0958. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960 or the Air Planning Branch, U.S. Environmental Protection Agency. EPA requests that if at all possible, you contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Stacy Harder, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9029. E-mail: *harder.stacy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. What Is the Background for this Proposed Action?

### *A. What Are the National Ambient Air Quality Standards?*

The CAA requires EPA to establish a NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the air quality levels they must meet to comply with the CAA. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

### *B. What Is the Standard for 8-Hour Ozone?*

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''Comparisons with the Primary and Secondary Ozone Standards'' states:

''The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.''

### *C. What Is a SIP and How Does It Relate to the NAAQS for 8-Hour Ozone?*

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### *D. What Is the Atlanta, Georgia Nonattainment Area, and What Is Its Current 8-Hour Ozone Nonattainment Classification?*

The Atlanta 8-hour ozone nonattainment area is located in Northern Georgia and consists of Barrow, Barton, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spaulding, and Walton Counties. For areas subject to Subpart 2 of the CAA, such as the Atlanta nonattainment area, the maximum period for attainment runs from the effective date of designations and classifications for the 8-hour ozone NAAQS and will be the same period as provided in Table 1 of CAA Section 181(a): Marginal—3 years; Moderate—6 years; Serious—9 years, Severe—15 or 17 years; and Extreme—20 years. The Phase I Ozone Implementation Rule (April 30, 2004, 69 FR 23951) provides for classification of the 8-hour ozone NAAQS (40 CFR 51.903). The effective date of designations and classifications for the 8-hour ozone NAAQS was June 15, 2004. See, April 30, 2004, 69 FR 23858.

The Atlanta area was initially designated nonattainment for the 8-hour ozone standard on April 30, 2004, and classified ''marginal'' based on a design value of .091 parts per million (ppm), with an attainment date of June 15, 2007. The design value of an area, which characterizes the severity of the air quality concern, is represented by

the annual fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor averaged over any three-year period.

*E. What Are the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications?*

Section 181(b)(2) prescribes the process for making determinations upon failure of an ozone nonattainment area to attain by its attainment date, and for reclassification of an ozone nonattainment area. Section 181(b)(2)(A) of the CAA requires that EPA determine, based on the area's design value (as of the attainment date), whether an ozone nonattainment area attained the ozone standard by that date. For marginal, moderate and serious areas, if EPA finds that the nonattainment area has failed to attain the ozone standard by the applicable attainment date, the area must be reclassified by operation of law to the higher of (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying any area that has failed to attain by its attainment date and the resulting reclassification. Different circumstances apply to severe and extreme areas.

## II. What Is EPA's Evaluation of the Atlanta Area's 8-Hour Ozone Data?

EPA makes attainment determinations for ozone nonattainment areas using available quality-assured air quality data. Within the Atlanta area, ground-level ozone is measured at various monitors. In recent years, the Confederate Avenue monitor has measured some of the highest 8-hour average ozone concentrations in the Atlanta area. The fourth-highest daily maximum readings for 2004, 2005, and 2006 in Atlanta are .092, .092, and .099 ppm, respectively. The 2004 fourth-highest daily maximum reading was from the Gwinnett Tech monitor, the 2005 fourth-highest daily maximum reading was from the Confederate Avenue monitor in Fulton County and the 2006 fourth-highest daily maximum reading was from the Conyers Monastery monitor in Rockdale County. For the Atlanta ozone nonattainment area, the attainment determination is based on 2004–2006 air quality data. The area has a 2004–2006 design value of .091 ppm. Therefore, the Atlanta area did not attain the 8-hour ozone NAAQS by the June 15, 2007, deadline for marginal areas.

TABLE 1.—ATLANTA AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES

| Site | Fourth highest daily maximum | | | Design value 3-year average (2004–2006) |
|---|---|---|---|---|
| | 2004 | 2005 | 2006 | |
| GA National Guard—Cobb Co. | 0.073 | 0.081 | 0.093 | 0.082 |
| U. of W.GA at Newnan—Coweta Co. | 0.083 | 0.078 | 0.086 | 0.082 |
| S. Dekalb—Dekalb Co. | 0.084 | 0.087 | 0.096 | 0.089 |
| Idlewood Rd.—Dekalb Co. | 0.088 | 0.084 | 0.094 | 0.088 |
| Douglasville W.—Douglas Co. | 0.08 | 0.089 | 0.095 | 0.088 |
| Fayetteville—Fayette Co. | 0.084 | 0.086 | 0.09 | 0.086 |
| Confederate Ave.—Fulton Co. | 0.089 | 0.092 | 0.092 | 0.091 |
| Gwinnett Tech—Gwinnett Co. | 0.092 | 0.082 | 0.096 | 0.090 |
| Henry Co. Ext. Office—Henry Co. | 0.085 | 0.089 | 0.095 | 0.089 |
| Yorkville—Paulding Co. | 0.073 | 0.082 | 0.084 | 0.091 |
| Conyers Monastery—Rockdale Co. | 0.087 | 0.088 | 0.099 | 0.091 |

Under Sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area can qualify for up to two 1-year extensions of its attainment date based on the number of exceedances in the attainment year and whether the state has complied with all requirements and commitments pertaining to the area in the applicable SIP. For the 8-hour standard, if an area's fourth-highest daily 8-hour average in the attainment year is 0.084 ppm or less (40 CFR 51.907), the area is eligible for up to two 1-year attainment date extensions. The attainment year is the year immediately preceding the nonattainment area's attainment date. For Atlanta, the attainment year is 2006. In 2006, the maximum fourth-highest daily 8-hour average value was 0.99 ppm. Based on this information, the Atlanta area currently does not qualify for a 1-year extension of the attainment date.

Section 181(b)(2)(A) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: the next higher classification, or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B). Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. The classification that would be applicable to the Atlanta area's ozone design value at the time of this notice is ''marginal'' because the area's 2006 calculated design value, based on quality-assured ozone monitoring data from 2004–2006, is 0.091 ppm. By contrast, the next higher classification for the Atlanta area is ''moderate.'' Because ''moderate'' is a higher nonattainment classification than ''marginal'' under the CAA statutory scheme, upon the effective date of a final rulemaking, the Atlanta area would be reclassified by operation of law as ''moderate,'' for failing to attain the standard by the marginal area applicable attainment date of June 15, 2007.

## III. What Action Is EPA Proposing?

*A. Determination of Nonattainment, Reclassification of Atlanta Nonattainment Area and New Attainment Date*

Pursuant to section 181(b)(2), EPA is proposing to find that the Atlanta area has failed to attain the 8-hour ozone NAAQS by the June 15, 2007, attainment deadline prescribed under the CAA for marginal ozone nonattainment areas. When EPA finalizes this finding, and it takes effect, the Atlanta area will be reclassified by operation of law from marginal nonattainment to moderate nonattainment. Moderate areas are required to attain the standard ''as expeditiously as practicable,'' but no later than 6 years after designation or June 15, 2010. The ''as expeditiously as practicable'' attainment date will be determined as part of the action on the

required SIP submittal demonstrating attainment of the 8-hour ozone standard. EPA is proposing a schedule by which Georgia will submit the SIP revision necessary for the proposed reclassification to moderate nonattainment of the 8-hour ozone standard.

*B. Proposed Date for Submitting a Revised SIP for the Atlanta Area*

When an area is reclassified, EPA has the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. Pursuant to 40 CFR 51.908(d), for each nonattainment area, the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case, 2009 (40 CFR 51.900(g)). The ozone season is the ozone monitoring season as defined in 40 CFR part 58, Appendix D, section 4.1, Table D–3 (October 17, 2006, 71 FR 61236). For the purposes of this reclassification for the Atlanta, Georgia area, March 1st is the beginning of the ozone monitoring season. As a result of discussions with the State, EPA proposes that the required SIP revision be submitted as expeditiously as practicable, but not later than December 31, 2008.

A revised SIP must include the following moderate area requirements: (1) An attainment demonstration (40 CFR 51.908); (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912); (3) reasonable further progress reductions in volatile organic compound (VOC) and/or nitrogen oxides ($NO_X$) emissions in Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale Counties (the 13 counties included in the Atlanta 1-hour ozone nonattainment area) and reasonable further progress reductions in VOC emissions in Barrow, Barton, Carroll, Newton, Pickens, Spaulding, and Walton Counties (40 CFR 51.910); (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)); (5) a vehicle inspection and maintenance program (40 CFR 51.350); and (6) nitrogen oxide and VOC emission offsets of 1.15 to 1 for major source permits (40 CFR 51.165(a)). (See also, the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b).)

## IV. Proposed Action

Pursuant to CAA section 181(b)(2), EPA is proposing to find that the Atlanta marginal 8-hour ozone area has failed to attain the 8-hour ozone NAAQS by June 15, 2007. If EPA finalizes its proposal, the area will, by operation of law, be reclassified as a moderate 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA, EPA is also proposing the schedule for submittal of the SIP revision required for moderate areas once the area is reclassified. EPA proposes that the required SIP revision for Georgia be submitted as expeditiously as practicable, but not later than December 31, 2008.

## V. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under the EO. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

*B. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This proposed action to reclassify the Atlanta area as a moderate ozone nonattainment area and to adjust applicable deadlines does not establish any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards, see, 13 CFR 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. After considering the economic impacts of today's action on small entities, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of

$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either state, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. Also, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and therefore, is not subject to the requirements of section 203. EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely proposes to determine that the Atlanta area has not attained by its applicable attainment date, and to reclassify the Atlanta area as a moderate ozone nonattainment area and to adjust applicable deadlines. Thus, Executive Order 13132 does not apply to this proposed rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have ''Tribal implications'' as specified in Executive Order 13175. This action merely proposes to determine that the Atlanta area has not attained by its applicable attainment date, and to reclassify the Atlanta area as a moderate ozone nonattainment area and to adjust applicable deadlines. The CAA and the Tribal Authority Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this proposed rule.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. This action merely proposes to determine that the Atlanta area has not attained by its applicable attainment date, and to reclassify the Atlanta area as a moderate ozone nonattainment area and to adjust applicable deadlines.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action merely proposes to determine that the Atlanta area has not attained by its applicable attainment date, and to reclassify the Atlanta area as a moderate ozone nonattainment area and to adjust applicable deadlines. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely proposes to determine that the Atlanta area has not attained by its applicable attainment date, and to reclassify the Atlanta area as a moderate ozone nonattainment area and to adjust applicable deadlines.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 9, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E7–20342 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–R04–OAR–2007–0959–200745; FRL–8482–3]**

## Determination of Nonattainment and Reclassification of the Memphis, TN/Crittenden County, AR 8-Hour Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to find that the Memphis, Tennessee and Crittenden County, Arkansas marginal 8-hour ozone nonattainment area (Memphis TN–AR Nonattainment Area) has failed to attain the 8-hour ozone national ambient air quality standard (''NAAQS'' or ''standard'') by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA) and Code of Federal Regulations (CFR) for marginal nonattainment areas. If EPA finalizes this finding, the Memphis TN–AR Nonattainment Area will then be reclassified as a moderate 8-hour ozone nonattainment area. The moderate area attainment date for the reclassified Memphis TN–AR Nonattainment Area would then be as expeditiously as practicable, but no later than June 15, 2010. Once reclassified, Tennessee and Arkansas must submit State Implementation Plan (SIP) revisions that meet the 8-hour ozone nonattainment requirements for moderate areas, as required by the CAA. In this action, EPA is also proposing the schedule for the States' submittal of the SIP revisions required for moderate areas once the area is reclassified.

**DATES:** Comments must be received on or before November 15, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0959, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: spann.jane@epa.gov* or *riley.jeffrey@epa.gov.*

3. *Fax:* 404–562–9019 (Region 4) or 214–665–7263 (Region 6).

4. *Mail:* EPA–R04–OAR–2007–0959, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, or Air Planning Section, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

5. *Hand Delivery or Courier:* Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, or Jeffrey Riley, Air Planning Section, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Regional Offices' normal hours of operation. The Regional Offices' official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2007–0959. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960 or the Air Planning Section, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. EPA requests that if at all possible, you contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

(Tennessee issues)—Jane Spann, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9029. E-mail: *spann.jane@epa.gov.*

(Arkansas issues)—Jeffrey Riley, Air Planning Section, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Phone: (214) 665–8542. E-mail: *riley.jeffrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. What Is the Background for This Proposed Action?

### *A. What Are the National Ambient Air Quality Standards?*

The CAA requires EPA to establish a NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants referred to as criteria pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the air quality levels they must meet to comply with the CAA. Also, these standards allow the American people to assess whether the air quality in their communities is healthful.

### *B. What Is the Standard for 8-Hour Ozone?*

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''Comparisons with the Primary and Secondary Ozone Standards'' states:

''The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.''

### *C. What Is a SIP and How Does It Relate to the NAAQS for 8-Hour Ozone?*

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### *D. What Is the Memphis TN–AR Nonattainment Area, and What Is its Current 8-Hour Ozone Nonattainment Classification?*

The Memphis TN–AR Nonattainment Area is located in both Western Tennessee and Northeastern Arkansas, and consists of Shelby County, Tennessee and Crittenden County, Arkansas, respectively. For areas subject to Subpart 2 of the CAA, such as the Memphis TN–AR Nonattainment Area, the maximum period for attainment runs from the effective date of designations and classifications for the 8-hour ozone NAAQS and will be the same period as provided in Table 1 of CAA Section 181(a): Marginal—3 years; Moderate—6 years; Serious—9 years; Severe—15 or 17 years; and Extreme—20 years. The Phase I Ozone Implementation Rule (April 30, 2004, 69 FR 23951) provides the classification scheme for the 8-hour ozone NAAQS (see, 40 CFR 51.903). The effective date of designations and classifications for the 8-hour ozone NAAQS was June 15, 2004 (April 30, 2004, 69 FR 23858).

The Memphis TN–AR Nonattainment Area was initially designated nonattainment for the 8-hour ozone standard on April 30, 2004, and classified as ''moderate'' based on a design value of .092 parts per million (ppm) with an attainment date of June 15, 2010 (April 30, 2004, 69 FR 23858). The design value of an area, which characterizes the severity of the air quality concern, is represented by the annual fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor averaged over any three-year period. On July 15, 2004, pursuant to section 181(a)(4) of the CAA, the States of Tennessee and Arkansas submitted a petition to EPA Regions 4 and 6, requesting a downward reclassification of the Memphis TN–AR Nonattainment Area from ''moderate'' to ''marginal'' for the 8-hour ozone standard. The petition was based on the area's ''moderate'' design value of .092 ppm being within five percent of the maximum ''marginal'' design value of 0.091 ppm. Pursuant to Section 181(a)(4), areas with design values within five percent of the standard may request a reclassification under specific circumstances. Factors for EPA to consider as part of such a request are described in Section 181(a)(4) of the CAA. The petition for reclassification to ''marginal'' was approved by EPA, and became effective on November 22, 2004 (see, 69 FR 56697, September 22, 2004).

As a result of the downward classification, the new attainment date for the Memphis TN–AR ''marginal'' Nonattainment Area was set at June 15, 2007, consistent with the CAA.

*E. What Are the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications?*

Section 181(b)(2) prescribes the process for making determinations upon failure of an ozone nonattainment area to attain by its attainment date, and for reclassification of an ozone nonattainment area. Section 181(b)(2)(A) of the Act requires that EPA determine, based on the area's design value (as of the attainment date), whether the ozone nonattainment area attained the ozone standard by that date. For marginal and moderate areas, if EPA finds that the nonattainment area has failed to attain the ozone standard by the applicable attainment date, the area must be reclassified to the higher of (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying any area that has failed to attain by its attainment date and the resulting reclassification. Different circumstances apply to severe and extreme areas.

## II. What Is EPA's Evaluation of the Memphis TN–AR Nonattainment Area's 8-Hour Ozone Data?

EPA makes attainment determinations for ozone nonattainment areas using available quality-assured air quality data. Within the Memphis TN–AR Nonattainment Area, ground-level ozone is measured at the Crittenden County monitor, which is located 10 miles northwest of downtown Memphis in Marion, Arkansas; at two monitors in Shelby County (Edmund Orgill Park and Frayser Street); and at one monitor located in the central part of DeSoto County, Mississippi. Although DeSoto County is not included in the Memphis TN–AR Nonattainment Area, its monitoring data is regularly considered for potential contributions to the Memphis TN–AR Nonattainment Area air shed. In recent years, the Marion monitor has measured some of the highest 8-hour average ozone concentrations in the Memphis TN–AR Nonattainment Area. For example, the fourth-highest daily maximum readings for 2004, 2005, and 2006 at the Marion monitor are .078, .096, and .089 ppm, respectively. The fourth-highest daily maximum readings for the Shelby County monitors are: .075, .081, and .084 ppm at the Edmund Orgill Park monitor, and .073, .082, and .083 ppm at the Frayser Street monitor. The fourth-highest daily maximum readings at the Hernando (DeSoto County) monitor are .080, .084, and .087 ppm. For the Memphis TN–AR Nonattainment Area, the attainment determination is based on 2004–2006 air quality data. The Area has a design value of .087 ppm. Therefore, pursuant to section 181(b)(2) of the CAA, the Memphis TN–AR Nonattainment Area did not attain the 8-hour ozone NAAQS by the June 15, 2007, deadline for marginal areas.

TABLE 1.—MEMPHIS TN–AR NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES (PPM) [1]

| Site | 4th highest daily max | | | Design value |
|---|---|---|---|---|
| | 2004 | 2005 | 2006 | 3 year average (2004–2006) |
| Marion, AR | 0.078 | 0.096 | 0.089 | 0.087 |
| Orgill Park, TN | 0.075 | 0.081 | 0.084 | 0.080 |
| Frayser, TN | 0.073 | 0.082 | 0.083 | 0.079 |
| Hernando, MS | 0.080 | 0.084 | 0.087 | 0.083 |

[1] Unlike for the 1-hour ozone standard, design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual fourth highest values (40 CFR part 50, Appendix I).

Under Sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area can qualify for up to two 1-year extensions of its attainment date based on the number of exceedances in the attainment year and whether the state has complied with all requirements and commitments pertaining to the area in the applicable SIP. For the 8-hour standard, if an area's fourth highest daily maximum 8-hour average in the attainment year is 0.084 ppm or less (see, 40 CFR 51.907), the area is eligible for up to two 1-year attainment date extensions. The attainment year is the year immediately preceding the nonattainment area's attainment date. For the Memphis TN–AR Nonattainment Area, the attainment year was 2006. In 2006, the fourth highest daily maximum 8-hour average value was 0.089 ppm. Based on this information, the Memphis TN–AR Nonattainment Area currently does not qualify for a 1-year extension of the attainment date.

Section 181(b)(2)(A) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: the next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B). Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. The classification that would be applicable to the Memphis TN–AR Nonattainment Area's ozone design value at the time of this notice is ''marginal'' because the area's 2006 calculated design value, based on quality-assured ozone monitoring data from 2004–2006, is 0.087 ppm. By contrast, the next higher classification for the Memphis TN–AR Nonattainment Area is ''moderate.'' Because ''moderate'' is a higher nonattainment classification than ''marginal'' under the CAA statutory scheme, upon the effective date of a final rulemaking, the Memphis TN–AR Nonattainment Area will be reclassified by operation of law as ''moderate,'' for failing to attain the standard by the marginal area applicable attainment date of June 15, 2007.

## III. What Action Is EPA Proposing?

*A. Determination of Nonattainment, Reclassification of Memphis TN–AR Nonattainment Area and New Attainment Date*

Pursuant to section 181(b)(2), EPA is proposing to find that the Memphis TN–AR Nonattainment Area has failed to attain the 8-hour ozone NAAQS by the June 15, 2007, attainment deadline prescribed under the CAA for marginal ozone nonattainment areas. If EPA finalizes this finding and it takes effect, the Memphis TN–AR Nonattainment

Area shall be reclassified by operation of law from marginal nonattainment to moderate nonattainment. Moderate areas are required to attain the standard ''as expeditiously as practicable'' but no later than 6 years after designation or June 15, 2010. The ''as expeditiously as practicable'' attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 8-hour ozone standard. EPA is proposing a schedule by which Tennessee and Arkansas will submit the SIP revisions necessary for the proposed reclassification to moderate nonattainment of the 8-hour ozone standard.

*B. Proposed Date for Submitting a Revised SIP for the Memphis TN–AR Nonattainment Area*

EPA must address the schedule by which Tennessee and Arkansas are required to submit a revised SIP. When an area is reclassified, EPA has the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. Pursuant to 40 CFR 51.908(d), for each nonattainment area, a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2009 (40 CFR 51.900(g)). The ozone season is the ozone monitoring season as defined in 40 CFR part 58, Appendix D, section 4.1, Table D–3 (October 17, 2006, 71 FR 61236). For the purposes of this reclassification for the Memphis TN–AR Nonattainment Area, March 1st is the beginning of the ozone monitoring season. As a result, EPA proposes that the required SIP revision be submitted by both Tennessee and Arkansas as expeditiously as practicable, but no later than March 1, 2009.

A revised SIP must include the following moderate area requirements: (1) An attainment demonstration (40 CFR 51.908); (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912); (3) reasonable further progress reductions in volatile organic compound (VOC ) emissions (40 CFR 51.910); (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)); (5) a vehicle inspection and maintenance program (40 CFR 51.350); and (6) nitrogen oxide and VOC emission offsets of 1.15 to 1 for major source permits (40 CFR 51.165(a). (See also, the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b).)

## IV. Proposed Action

Pursuant to CAA section 181(b)(2), EPA is proposing to find that the Memphis TN–AR ''marginal'' 8-hour Ozone Nonattainment Area failed to attain the 8-hour ozone NAAQS by June 15, 2007. If EPA finalizes its proposal, the Area will by operation of law be reclassified as a moderate 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA, EPA is also proposing the schedule for submittal of the SIP revisions required for moderate areas once the area is reclassified. EPA proposes that the required SIP revisions for Tennessee and Arkansas be submitted as expeditiously as practicable, but no later than March 1, 2009.

## V. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

*B. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. This proposed action to reclassify the Memphis TN–AR Nonattainment Area as a moderate ozone nonattainment area and to adjust applicable deadlines does not establish any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. After considering the economic impacts of today's action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. Also, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and therefore, is not subject to the requirements of section 203. EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, this action merely proposes to determine that the Memphis TN–AR Nonattainment Area had not attained by its applicable attainment date, and to reclassify the Memphis TN–AR Nonattainment Area as a moderate ozone nonattainment area and to adjust applicable deadlines. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have ''Tribal implications'' as specified in Executive Order 13175. This action merely proposes to determine that the Memphis TN–AR Nonattainment Area has not attained by its applicable attainment date, and to reclassify the Memphis TN–AR Nonattainment Area as a moderate ozone nonattainment area and to adjust applicable deadlines. The Clean Air Act and the Tribal Authority Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. This action merely proposes to determine that the Memphis TN–AR Nonattainment Area has not attained by its applicable attainment date, and to reclassify the Memphis TN–AR Nonattainment Area as a moderate ozone nonattainment area and to adjust applicable deadlines.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action merely proposes to determine that the Memphis TN–AR Nonattainment Area has not attained by its applicable attainment date, and to reclassify the Memphis TN–AR ''marginal'' Nonattainment Area as a ''moderate'' ozone nonattainment area

and to adjust applicable deadlines. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely proposes to determine that the Memphis TN–AR Nonattainment Area has not attained by its applicable attainment date, and to reclassify the Memphis TN–AR Nonattainment Area as a moderate ozone nonattainment area and to adjust applicable deadlines.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 9, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

Dated: September 24, 2007.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. E7–20390 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 10

**RIN 1024–AD68**

## Native American Graves Protection and Repatriation Act Regulations—Disposition of Culturally Unidentifiable Human Remains

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule specifies procedures for the disposition of culturally unidentifiable human remains in the possession or control of museums or Federal agencies, thus implementing the Native American Graves Protection and Repatriation Act of 1990 (Act). Publication of this document is intended to solicit comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and members of the public before its publication as a final rule.

**DATES:** Written comments will be accepted through January 14, 2008.

**ADDRESSES:** You may submit comments, identified by the number RIN 1024–AD68, by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

—*Mail to:* Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, Docket No. 1024–AC84, 1849 C Street, NW., (2253), Washington, DC 20240.

—*Hand deliver to:* Dr. Sherry Hutt, 1201 Eye Street, NW., 8th floor, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street, NW., 8th floor, Washington, DC 20240, telephone (202) 354–1479, facsimile (202) 371–5197.

**SUPPLEMENTARY INFORMATION:**

### Authority

Sections 8(c)(5) and (c)(7) of the Native American Graves Protection and Repatriation Act (Act) (25 U.S.C. 3001 *et seq.*) gives the Review Committee the responsibility for recommending specific actions for developing a process for disposition of culturally unidentifiable human remains and consulting with the Secretary of the Interior (Secretary) in the development of regulations to carry out the Act. Section 13 charges the Secretary with promulgating regulations to carry out the Act. Section 5(1) of the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm) authorizes the Secretary to promulgate regulations providing for the ultimate disposition of archaeological resources and other resources removed under the Act of June 27, 1960 (the Reservoir Salvage Act, as amended, also known as the Archeological and Historic Preservation Act of 1974, 16 U.S.C. 469–469c–1) or the Act of June 8, 1906 (the Antiquities Act of 1906, as amended, 16 U.S.C. 431–433).

### Background

On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Section 8 of the Act established the Native American Graves Protection and Repatriation Review Committee of seven private citizens to monitor and review implementation of the inventory and identification process and repatriation activities required under the Act. Section 8(c)(5) charged the Review Committee with compiling an inventory of culturally unidentifiable human remains that are in the possession or control of museums or Federal agencies and recommending specific actions for developing a process for disposition of such remains. The inventory of culturally unidentifiable human remains and recommendations regarding their disposition relate only to human remains in the possession or control of museums and Federal agencies and not to human remains that are excavated or removed from Federal or tribal lands after November 16, 1990 under section 3 of the Act.

Current regulations implementing the Act require museums and Federal agencies to retain possession of culturally unidentifiable human remains until final regulations are promulgated or the Secretary recommends otherwise. The disposition of funerary objects associated with culturally unidentifiable human remains is not specifically addressed in the Act. During deliberations over recommendations regarding the disposition of culturally unidentifiable human remains, the Review Committee considered the intrinsic relationship of human remains to associated funerary objects and concluded that nothing in the Act precludes the voluntary disposition of these cultural items by museums or Federal agencies to the extent allowable by Federal law.

In 1994, the Review Committee began to formally solicit comments from Indian tribes, Native Hawaiian organizations, museums, and Federal agencies regarding the disposition of culturally unidentifiable human remains. The Review Committee developed its first draft of recommendations regarding the disposition of culturally unidentifiable human remains and associated funerary objects in February 1995. These draft recommendations were published for

public comment in the **Federal Register** (60 FR 32163, June 20, 1995). Copies of the draft were sent to over 3,000 Indian tribes, Native Hawaiian organizations, museums, Federal agencies, national museum and scientific organizations, and members of the public. One hundred and twenty-nine written comments were received during the 100-day comment period, representing 16 Indian tribes, 49 museums, 12 Federal agencies, 3 national museum and scientific organizations, and 58 members of the public.

Based on the comments received, a revised draft of recommendations regarding the disposition of culturally unidentifiable human remains and associated funerary objects was developed in June 1996. The revised draft recommendations were published for public comment in the **Federal Register** (61 FR 43071, August 20, 1996). Copies of the draft were sent to over 3,000 Indian tribes, Native Hawaiian organizations, museums, Federal agencies, national museum and scientific organizations, and members of the public. Forty-nine written comments were received during the 45-day comment period, representing 4 Indian tribes, 26 museums, 4 Federal agencies, 6 national museum and scientific organizations, and 11 members of the public.

In June 1998, the Review Committee developed draft principles of agreement regarding the disposition of culturally unidentifiable human remains. The draft principles of agreement were published for public comment in the **Federal Register** on two different occasions (64 FR 33502, June 23, 1999 and 64 FR 41135, July 29, 1999). Copies of the draft were sent to over 3,000 Indian tribes, Native Hawaiian organizations, museums, Federal agencies, national museum and scientific organizations, and members of the public. Eighty-nine written comments were received during the 70-day comment period, representing 13 Indian tribes, 39 museums, 4 Federal agencies, 5 national museum and scientific organizations, and 22 members of the public.

While the Review Committee developed the draft of general recommendations, a separate procedure was developed for consideration of case-by-case requests for disposition of culturally unidentifiable human remains and associated funerary objects based on a recommendation from the Secretary [43 CFR 10.9(e)(6)]. Forty-one case-by-case requests were received and all were referred to the Review Committee for consideration. Twenty-six requests were made by museums and 15 requests were made by Federal agencies. The Review Committee considered each request as part of its regular meeting agenda and recommendations were referred to the National Park Service for action. Responses to each requesting museum or Federal agency were signed by a representative of the Secretary as required by § 10.9(e)(6).

Of the 41 requests, the Secretary's representative recommended disposition of culturally unidentifiable human remains in 33 cases. Nine of the 33 recommended dispositions were to Indian tribes based on the recognition of their aboriginal occupation of the area in which the human remains and associated funerary objects were recovered, 8 were to coalitions including federally recognized Indian tribes, 11 were to non-federally recognized Indian groups, and 5 were to be completed according to applicable State law.

Eleven of the 33 recommended dispositions also included funerary objects that were associated with the culturally unidentifiable human remains. In response to one of the requests, the representative of the Secretary provided a recommendation on February 7, 2000 that stated ''the statutory language neither requires nor precludes the committee from making recommendations regarding the disposition of funerary objects associated with culturally unidentifiable human remains. While regulatory provisions require museums or federal agencies to retain possession of culturally unidentifiable human remains until final regulations are promulgated or the Secretary recommends otherwise, these provisions do not apply to associated funerary objects. A museum may choose to repatriate such items. However, a Notice of Inventory Completion must be published in the **Federal Register** before the disposition.''

Of the 41 requests made regarding the disposition of culturally unidentifiable human remains, in eight cases the Secretary's representative recommended that the culturally unidentifiable human remains be retained pending completion of the inventory required under 43 CFR 10.9.

After circulating three drafts for public comment and considering the specific case-by-case requests, the Review Committee developed its final recommendations regarding the disposition of culturally unidentifiable human remains in May 2000. The recommendations were published on June 8, 2000 (65 FR 36462).

The Review Committee recognized that the legislative intent of the Act is expressed by its title: the protection of Native American graves and repatriation [of Native American cultural items]. Specifically, the Review Committee found that the Act requires (1) the disposition of all Native American human remains and cultural items excavated on or removed from Federal lands after November 16, 1990, with disposition based on linkages of lineal descent, tribal land, cultural affiliation, or aboriginal land; (2) the repatriation of culturally affiliated human remains and associated funerary objects in Federal agency and museum collections, if requested by a culturally affiliated Indian tribe or Native Hawaiian organization, with repatriation based on linkages of lineal descent or cultural affiliation; and (3) the development of regulations for the disposition of unclaimed human remains and objects and culturally unidentifiable human remains in Federal agency and museum collections. Although the treatment of funerary objects associated with culturally unidentifiable human remains is not addressed in the Act, the Review Committee recognized that the Act does not prohibit the voluntary repatriation of these cultural items by museums or Federal agencies to the extent allowed by Federal law.

Museums or Federal agencies must determine whether Native American human remains in their control are related to lineal descendants, culturally affiliated with a present-day federally recognized Indian tribe or Native Hawaiian organization, or are culturally unidentifiable. This determination must be made in consultation with all appropriate Indian tribes or Native Hawaiian organizations, as described in 43 CFR 10.9(b), and through a good faith evaluation of all relevant and available documentation. A determination that human remains are culturally unidentifiable may change to a determination of cultural affiliation as additional information becomes available through ongoing consultation or any other source. The Review Committee finds no statute of limitations in the Act for lineal descendants, Indian tribes, or Native Hawaiian organizations to make a claim, and a museum or Federal agency's determination that human remains are culturally unidentifiable may occur for different reasons.

**Categories of Culturally Unidentifiable Human Remains**

The Review Committee's recommendations identified three categories of culturally unidentifiable

human remains: (1) those for which cultural affiliation could be determined but that the appropriate Native American group is not federally recognized as an Indian tribe; (2) those that represent an identifiable earlier group, but for which no present-day Indian tribe has been identified by the museum or Federal agency; and (3) those for which the museum or Federal agency believes that evidence is insufficient to identify an earlier group.

**Documentation**

Documentation is required for inventory completion and determinations of cultural affiliation by museums or Federal agencies and should be prepared in accordance with the standards outlined in 43 CFR 10.9(c) and 10.14. Documentation must occur within the context of the consultation process. The Review Committee proposed that additional study of culturally unidentifiable human remains and associated funerary objects is not prohibited if the appropriate parties in consultation agree that such study is appropriate. The Review Committee confirmed that once inventories have been completed, the Act may not be used to require new scientific studies or other means of acquiring or preserving additional scientific information from human remains and associated funerary objects.

**Disposition**

The Review Committee proposed three guidelines for the disposition of culturally unidentifiable human remains.

1. Respect must be the foundation for any disposition of culturally unidentifiable human remains. Human remains determined to be culturally unidentifiable are no less deserving of respect than those for which cultural affiliation has been established.

2. Because there may be different reasons for human remains being unclaimed or determined to be culturally unidentifiable, there may be more than one appropriate disposition solution. Examples of appropriate disposition solutions include the return of human remains that are determined to be culturally unidentifiable that were removed from tribal land; human remains that are determined to be culturally unidentifiable that were recovered from the aboriginal land of an Indian tribe; or human remains that are culturally unidentifiable but for which there is a relationship of shared group identity with a non-federally recognized Native American group.

3. A museum or Federal agency may also seek the recommendation of the Review Committee for the disposition of culturally unidentifiable human remains based on criteria other than those listed above.

The Review Committee proposed two models for determining the disposition of culturally unidentifiable human remains. The first model involved the joint recommendations by claimants and museums or Federal agencies. Disposition of culturally unidentifiable human remains may proceed in those cases where all the relevant parties have agreed in writing that the inventory requirements have been met and that the Review Committee's guidelines for respectful treatment, recognition of alternative disposition solutions, and the use of the Review Committee for disposition recommendations have been followed. The Review Committee noted that it had already recommended disposition of culturally unidentifiable human remains in cases that met the three guidelines.

The second model involved the joint recommendations of regional consortia. The Review Committee recognized that historical and cultural factors, and therefore issues concerning the definition and disposition of culturally unidentifiable human remains, vary significantly across the United States. Therefore, the Review Committee recommended that regional solutions be developed that would best fit regional circumstances. The Review Committee recommended a process in which Indian tribes and Native Hawaiian organizations define regions within which the most appropriate solutions for disposition of culturally unidentifiable human remains might be determined. Within each region, the appropriate Federal agencies, museums, Indian tribes, and Native Hawaiian organizations would consult together and propose a framework and schedule to develop and implement the most appropriate model for their region. Dispositions agreed upon through regional consultation meetings would be made by the appropriate Federal agencies, museums, and Indian tribes. If a disposition agreement could not be reached through regional consultation meetings, the matter could be brought before the Review Committee. Any proposed regional disposition agreement would have to meet the Review Committee's three guidelines for disposition.

**Inventory**

Section 8(c)(5) of the Act directs the Review Committee to compile an inventory of culturally unidentifiable human remains that are in the possession or control of museums or Federal agencies. The scope of this inventory was expanded to include both culturally unidentifiable human remains and funerary objects with which they are associated by § 10.9(d)(2).

The Review Committee's inventory summarizes information provided by museums or Federal agencies in their inventories. This includes:

1. The number of human remains and associated funerary objects under their control;

2. State and county from which the human remains and associated funerary objects were removed;

3. The earlier group to which the human remains and associated funerary objects are thought to have belonged;

4. The date range during which the human remains and associated funerary objects are thought to have been originally interred; and

5. The date when custody of the human remains and associated funerary objects was either transferred to an Indian tribe, Native Hawaiian organization, or non-federally recognized Indian group or they were reinterred.

Section 8(g)(2) of the Act requires the Secretary to provide reasonable administrative and staff support necessary for the deliberations of the Review Committee. One of those duties has been compilation of the Review Committee's inventory of culturally unidentifiable human remains and associated funerary objects. The Review Committee's inventory was compiled from the inventories submitted by museums or Federal agencies under 43 CFR 10.9(e)(6). Each museum and Federal agency had an opportunity to verify the Review Committee's inventory of culturally unidentifiable human remains and associated funerary objects from their institution for verification before submission of the final inventory to the Review Committee. The Review Committee's inventory is posted at *http://www.cr.nps.gov/nagpra/onlinedb/index.htm* and presently includes information on 118,348 human remains and 846,187 associated funerary objects from 614 museums or Federal agencies.

**Section-by-Section Analysis**

*Section 10.1 Purpose and Applicability*

Paragraph 10.1(b)(3) provides clarification to Federal agencies as to when a determination constitutes final agency action as used in the Administrative Procedure Act (5 U.S.C. 704).

*Section 10.2 Definitions*

Section 10.2 provides definitions of terms used throughout Part 10.

Paragraph 10.2(e) provides additional clarification to the definition of cultural affiliation. Human remains and associated funerary objects in museum or Federal agency collections for which no lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization was determined are referred to as culturally unidentifiable.

Paragraph 10.2(g)(5) provides a definition of disposition and identifies procedures to effectuate this process in various situations.

*Section 10.9 Inventories*

Paragraph 10.9(e)(2) details the contents of notices of inventory completion. Additional text to clarify that such notices include information regarding culturally unidentifiable human remains and associated funerary objects to be transferred or reinterred under 43 CFR 10.11 is proposed for addition.

Paragraph 10.9(e)(5) directs museums or Federal agencies to supply additional available documentation upon the request of an Indian tribe or Native Hawaiian organization. Additional text to clarify that such documentation shall be considered a public record subject to disclosure except when exempted under applicable law, such as the Freedom of Information Act and the Privacy Act, is proposed for addition. Further, as required by section 5(B)(2) (Inventory For Human Remains and Associated Funerary Objects) of the Act, neither a request for such documentation nor any provisions of the regulations shall be construed as authorizing the initiation of new scientific studies of such human remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

Paragraph 10.9(e)(6) is rewritten to remove the last three sentences that provide direction to museums and Federal agencies pending promulgation of § 10.11.

*Section 10.11 Disposition of Culturally Unidentifiable Human Remains*

This new section fulfills the Secretary's responsibility to promulgate regulations under sections 8(c)(5) and 13 of the Act regarding the process for the disposition of culturally unidentifiable human remains. The Department of the Interior developed this section after full and careful consideration of the Review Committee's recommendations and other relevant legislation and policy.

Paragraph (b) concerns consultation. The drafters recognize that as a result of consultation a museum or Federal agency may revise its determination regarding the cultural affiliation of human remains and associated funerary objects. Notification and repatriation of human remains and associated funerary objects that are determined to be culturally affiliated with an Indian tribe or Native Hawaiian organization must be completed following provisions of 43 CFR 10.9(e) and 10.10(b).

Paragraph (c) establishes three choices for the disposition of culturally unidentifiable human remains. The processes outlined in paragraphs (c)(1) and (c)(2) are mandatory. The process outlined in paragraph (c)(3) and (c)(4) are voluntary but recommended.

Paragraph (c)(1) requires a museum or Federal agency to offer to transfer control of culturally unidentifiable human remains for which it cannot prove right of possession to Indian tribes or Native Hawaiian organizations according to three priority categories outlined below.

A museum or Federal agency can obtain right of possession to Native American human remains by several means. Section 2(13) of the Act stipulates that the original acquisition of Native American human remains and associated funerary objects that were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains. Further, section 3(e) of the Act states that nothing in section 3 of the Act shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object or sacred object.

The priority ownership categories in Section 3(a) of the Act served as a reasonable model for the proposed priority categories for disposition of culturally unidentifiable human remains. Control of human remains excavated or discovered under section 3 of the Act can be based on lineal descent, tribal land, aboriginal land, and cultural relationship, as well as cultural affiliation. However, it was necessary to make several changes to the priority ownership categories in Section 3(a) of the Act to accommodate the disposition of culturally unidentifiable human remains. The drafters request comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and other interested persons regarding the appropriateness of using the priority structure in determining the disposition of culturally unidentifiable human remains.

Paragraph (c)(1)(i) stipulates that first priority would be to the Indian tribe or Native Hawaiian organization on whose tribal land, at the time of recovery, the human remains were recovered. This category parallels the provisions in section 3(a)(2) of the Act regarding the disposition of cultural items from tribal land after November 16, 1990. This provision would apply to sites considered to be tribal land at the time the original excavation or removal occurred.

Paragraph (c)(1)(ii) stipulates that second priority would be to the Indian tribe or tribes that are recognized as aboriginally occupying the area in which the human remains were recovered. Aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by treaty, act of Congress, or executive order. This category is based on the provisions of section 3(a)(2)(C) of the Act regarding the disposition of cultural items from Federal or tribal land after November 16, 1990. The Act specifically identified final judgments of the Indian Claims Commission and the United States Court of Claims as two sources of information regarding aboriginal occupation. Certain treaties, acts of Congress, and executive orders also identify areas aboriginally occupied by Indian tribes. Maps of the territory ceded by all United States treaties were originally published in the 18th Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1896–1897 [Government Printing Office, 1899] and are available online at *http://memory.loc.gov/ammem/amlaw/lwss-ilc.html.* Treaties signed before the establishment of the United States between the various colonial governments and Indian tribes may also be used to identify areas aboriginally occupied by Indian tribes.

Paragraph (c)(1)(iii) stipulates that third priority would be to Indian tribes and Native Hawaiian organizations with a cultural relationship to the region from which the human remains were removed or, for human remains lacking geographic affiliation, a cultural relationship to the region in which the museum or Federal agency with control over the human remains is located. This category is similar to provisions of section 3(a)(2)(C)(2) of the Act regarding

the disposition of cultural items from Federal or tribal land after November 16, 1990. However, while the provisions of section 3(a)(2)(C)(2) require a cultural relationship between an Indian tribe and cultural items, this paragraph requires a cultural relationship between an Indian tribe or Native Hawaiian organization and the region from which the human remains either were removed or are currently located. Nearly 70 percent of the 110,565 culturally unidentifiable human remains for which geographical information was provided were recovered from the same state in which the possessing museum or Federal agency is located. The majority of the 7,783 human remains lacking provenience information are likewise presumed to have been recovered from the immediate vicinity of the repository in which they are currently located.

Paragraph (c)(1)(iv) stipulates that if it can be shown by a preponderance of the evidence that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains than the Indian tribe or Native Hawaiian organization specified in (c)(1)(ii) or (c)(1)(iii), the Indian tribe or Native Hawaiian organization that has the strongest demonstrated cultural relationship would have priority, if upon notice, such Indian tribe or Native Hawaiian organization states such a claim. This provision is similar to the caveat in section 3(a)(2)(C)(2) of the Act regarding the disposition of cultural items from Federal or tribal land after November 16, 1990. The drafters request comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and other interested persons regarding the meaning of the term ''cultural relationship.''

Paragraph (c)(2) provides notice that any disposition of human remains excavated or removed from ''Indian lands'' as defined by the Archaeological Resources Protection Act (ARPA) must also comply with the provisions of that statute and its implementing regulations. ''Indian lands'' means ''lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or Indian individual'' [16 U.S.C. 470bb(4)].

Paragraph (c)(3) establishes a process for the voluntary transfer of control of culturally unidentifiable human remains that are not transferred under provisions of paragraph (c)(1) to a non-federally recognized Indian group, or reinterment of culturally unidentifiable human remains according to State or other law. Such dispositions may be completed upon receipt of a recommendation from the Secretary or authorized representative. The Secretary will only consider recommending such dispositions with the written consent of all Indian tribes identified in paragraph (c)(1) and (c)(2), in order to ensure that the rights of federally recognized Indian tribes and tribal members are protected. The Secretary's recommendation regarding the disposition of culturally unidentifiable human remains or associated funerary objects to a non-federally recognized Indian group does not indicate Federal recognition of the group's status as an Indian tribe or the existence of a government-to-government relationship.

Paragraph (c)(4) stipulates that a museum or Federal agency may transfer control of funerary objects that are associated with culturally unidentifiable human remains following the provisions of paragraphs (c)(1), (c)(2), and (c)(3). This provision is consistent with customary religious and spiritual beliefs that link the disposition of funerary objects with the human remains with which they were intentionally placed. The Secretary recommends that museums and Federal agencies transfer all funerary objects associated with culturally unidentifiable human remains unless such a transfer is otherwise prohibited under law.

**Compliance With Other Laws**

*Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The requirements to consult with Indian tribes and Native Hawaiian organizations are minimal and do not constitute a significant economic burden. This rule will require the disposition of only those Native American human remains for which the controlling entity cannot prove right of possession [25 U.S.C. 3005].

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule will require the disposition of only those Native American human remains for which the controlling museum or Federal agency cannot prove right of possession [25 U.S.C. 3005(c)].

*Federalism (Executive Order 12612)*

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required.

*Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b) of the order.

*Paperwork Reduction Act*

The collection of information contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until approved by the Office of Management and Budget. Public reporting burden for this collection of information is expected to average 20 hours for the exchange of summary or inventory information between a museum and an Indian tribe and 6 hours per response for the notification to the Secretary, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Attn: Docket No. 1024–AC84, National Park Service, Department of Interior Building, 1849 C Street, NW., Room 3317, Washington, DC 20240, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Washington, DC 20503.

*National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment and can be Categorically Excluded under 516 DM 2, Appendix 1.10, ''Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.''

*Government-to-Government Relationship With Indian Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' [59 FR 22951], Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' [65 FR 218], and 512 DM 2, ''Departmental Responsibilities for Indian Trust Resources,'' this rule has a potential effect on federally recognized Indian tribes. The proposed rule was developed in consultation with the Native American Graves Protection and Repatriation Review Committee, which includes members nominated by Indian tribes. The Review Committee consulted with Indian tribes in the development of the Review Committee's recommendations regarding the disposition of culturally unidentifiable human remains that form the basis of this proposed rule. The Review Committee consulted with tribal representatives regarding its recommendations on February 16–18, 1995 in Los Angeles, CA; June 9–11, 1996 in Billings, MT; June 25–27, 1998 in Portland, OR; and May 2–4, 2000 in Juneau, AK. Tribal representatives were also consulted regarding draft text for these regulations at Review Committee meetings on May 2–4, 2000 in Juneau, AK; May 31–June 2, 2002 in Tulsa, OK; and November 8–9, 2002 in Seattle, WA.

*Clarity of Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Drafting Information**

This proposed rule was prepared by Dr. C. Timothy McKeown in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8(c)(7) of the Act, and Jennifer Lee and Jerry Case, WASO Regulations Program, National Park Service.

**Public Participation**

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. We also request comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and other interested persons regarding:

1. The meaning of the term ''cultural relationship;'' and

2. The appropriateness of using the priority structure in determining the disposition of culturally unidentifiable human remains.

Copies of this proposed rule may be obtained by submitting a request to the Manager, National NAGPRA program, National Park Service, at the address noted at the beginning of this rulemaking. Commentors wishing the National Park Service to acknowledge receipt of their comments must submit those comments with a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No 1024–AD68.'' The postcard will be date stamped and returned to the commentor.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects in 43 CFR Part 10**

Administrative practice and procedure, Graves, Hawaiian Natives, Historic preservation, Indians-claims, Museums, Reporting and record keeping requirements, Repatriation.

In consideration of the foregoing, 43 CFR Part 10 is proposed to be amended as follows:

## PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

1. The authority for Part 10 continues to read as follows:

**Authority:** 25 U.S.C. 3001 *et seq.*, 16 U.S.C. 470dd (2).

2. In § 10.1 revise paragraph (b)(3) to read as follows:

**§ 10.1 Purpose and applicability.**

* * * * *

(b) * * *

(3) Throughout this part are decision points which determine how this part applies in particular circumstances, e.g., a decision as to whether a museum ''controls'' human remains and cultural objects within the meaning of the regulations, or, a decision as to whether

an object is a ''human remain,'' ''funerary object,'' ''sacred object,'' or ''object of cultural patrimony'' within the meaning of the regulations. Any final determination making the Act or this part inapplicable is subject to review under section 15 of the Act. With respect to Federal agencies, the final denial of a request of a lineal descendant, Indian tribe, or Native Hawaiian organization for the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony brought under, and in compliance with, the Act and this part constitutes a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

3. Amend § 10.2 by revising paragraph (e) and adding paragraph (g)(5) to read as follows:

**§ 10.2 Definitions.**

* * * * *

(e)(1) What is cultural affiliation? Cultural affiliation means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence—based on geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion—reasonably leads to such a conclusion.

(2) What does culturally unidentifiable mean? Culturally unidentifiable refers to human remains and associated funerary objects in museum or Federal agency collections for which no lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization has been identified.

* * * * *

(g) * * *

(5) *Disposition* means the transfer of control over Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony by a museum or Federal agency under this part. This part establishes disposition procedures for several different situations:

(i) Custody of human remains, funerary objects, sacred objects, and objects of cultural patrimony excavated intentionally from, or discovered inadvertently on Federal or tribal lands after November 16, 1990 is established under § 10.6;

(ii) Repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony in museum and Federal agency collections to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization is established under § 10.10.

(iii) Disposition of culturally unidentifiable human remains, with or without associated funerary objects, in museum or Federal agency collections is established under § 10.11.

4. Amend 10.9 by revising paragraphs (e)(2), (5), and (6) as follows:

**§ 10.9 Inventories.**

* * * * *

(e) * * *

(2) The notice of inventory completion must:

(i) Summarize the contents of the inventory in sufficient detail so as to enable the recipients to determine their interest in claiming the inventoried items;

(ii) Identify each particular set of human remains or each associated funerary object and the circumstances surrounding its acquisition;

(iii) Describe the human remains or associated funerary objects that are clearly identifiable as to cultural affiliation;

(iv) Describe the human remains or associated funerary objects that are not clearly identifiable as culturally affiliated with an Indian tribe or Native Hawaiian organization, but that are likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization given the totality of circumstances surrounding acquisition of the human remains or associated objects; and

(v) Describe those human remains, with or without associated funerary objects, that are culturally unidentifiable but that may be transferred under § 10.11.

(3) * * *

(4) * * *

(5) Upon request by an Indian tribe or Native Hawaiian organization that has received or should have received a notice and inventory under paragraphs (e)(1) and (e)(2) of this section, a museum or Federal agency must supply additional available documentation.

(i) For purposes of this paragraph, ''documentation'' means a summary of existing museum or Federal agency records including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and associated funerary objects.

(ii) Documentation supplied under this paragraph is considered a public record except as exempted under relevant laws. Neither a request for documentation nor any other provisions of this part may be construed as authorizing either:

(A) The initiation of new scientific studies of the human remains and associated funerary objects; or

(B) Other means of acquiring or preserving additional scientific information from such remains and objects.

(6) If the museum or Federal agency official determines that the museum or Federal agency has possession of or control over human remains, with or without associated funerary objects, that cannot be identified as affiliated with a lineal descendent, Indian tribes, or Native Hawaiian organizations, the museum or Federal agency must provide the Manager, National NAGPRA Program notice of this result and a copy of the list of such culturally unidentifiable human remains and any associated funerary objects. The Manager, National NAGPRA Program must make this information available to members of the Review Committee. Culturally unidentifiable human remains, with or without associated funerary objects, are subject to disposition under § 10.11.

* * * * *

5. Add § 10.11 to read as follows:

**§ 10.11 Disposition of culturally unidentifiable human remains.**

(a) General. This section implements section 8 (c)(5) of the Act.

(b) Consultation. (1) The museum or Federal agency official must initiate consultation regarding the disposition of culturally unidentifiable human remains and associated funerary objects:

(i) Within ninety (90) days of receipt of a request from an Indian tribe or Native Hawaiian organization to transfer control of culturally unidentifiable human remains and associated funerary objects; or

(ii) Absent such a request, before any offer to transfer control of culturally unidentifiable human remains and associated funerary objects.

(2) The museum or Federal agency official must initiate consultation with officials and traditional religious leaders of all Indian tribes and Native Hawaiian organizations:

(i) From whose tribal lands, at the time of the removal, the human remains and associated funerary objects were removed;

(ii) From whose aboriginal lands the human remains and associated funerary objects were removed. Aboriginal occupation may be recognized by a final judgment of the Indian Claims

Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order; and

(iii)(A) With a cultural relationship to the region from which the human remains and associated funerary objects were removed; or

(B) In the case of human remains and associated funerary objects lacking geographic affiliation, with a cultural relationship to the region in which the museum or Federal agency repository is located.

(3) The museum or Federal agency official must provide the following information in writing to all Indian tribes and Native Hawaiian organizations with which the museum or Federal agency consults:

(i) A list of all Indian tribes and Native Hawaiian organizations that are being, or have been, consulted regarding the particular human remains and associated funerary objects;

(ii) A list of any non-federally recognized Indian groups that are known to have a relationship of shared group identity with the particular human remains and associated funerary objects; and

(iii) An offer to provide a copy of the original inventory and additional documentation regarding the particular human remains and associated funerary objects.

(4) During consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations:

(i) The name and address of the Indian tribe official to act as representative in consultations related to particular human remains and associated funerary objects;

(ii) The names and appropriate methods to contact any traditional religious leaders who should be consulted regarding the human remains and associated funerary objects;

(iii) Temporal and/or geographic criteria that the museum or Federal agency should use to identify groups of human remains and associated funerary objects for consultation;

(iv) The names and addresses of other Indian tribes, Native Hawaiian organizations, or non-federally recognized Indian groups that should be included in the consultations; and

(v) A schedule and process for consultation.

(5) During consultation, the museum or Federal agency official should seek to develop a proposed disposition for culturally unidentifiable human remains and associated funerary objects that is mutually agreeable to the parties specified in paragraph (b)(2) of this section. The agreement must be consistent with this part.

(6) If consultation results in a determination that human remains and associated funerary objects previously determined to be culturally unidentifiable are actually culturally affiliated with an Indian tribe or Native Hawaiian organization, the notification and repatriation of the human remains and associated funerary objects must be completed as required by § 10.9 (e) and § 10.10 (b).

(c) Disposition of culturally unidentifiable human remains and associated funerary objects. (1) A museum or Federal agency that is unable to prove that it has right of possession, as defined at § 10.10 (a)(2), to culturally unidentifiable human remains must offer to transfer control of the human remains to Indian tribes and Native Hawaiian organizations in the following priority order:

(i) The Indian tribe or Native Hawaiian organization from whose tribal land, at the time of the excavation or removal, the human remains were removed;

(ii) The Indian tribe or tribes that are recognized as aboriginally occupying the area from which the human remains were removed. Aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order; or

(iii) The Indian tribe and Native Hawaiian organization with:

(A) A cultural relationship to the region from which the human remains were removed, or

(B) For human remains lacking geographic affiliation, a cultural relationship to the region in which the museum or Federal agency with control over the human remains is located.

(iv) If it can be shown by a preponderance of the evidence that another Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains than an entity specified in paragraph (c)(1)(ii) or (c)(1)(iii) of this section, the Indian tribe or Native Hawaiian organization that has the strongest demonstrated cultural relationship, if upon notice, the Indian tribe or Native Hawaiian organization claims the human remains.

(2) Any disposition of human remains excavated or removed from ''Indian lands'' as defined by the Archaeological Resources Protection Act (16 U.S.C. 470bb (4)) must also comply with the provisions of that statute and its implementing regulations.

(3) If none of the Indian tribes or Native Hawaiian organizations identified in paragraph (c)(1) of this section agrees to accept control, a museum or Federal agency may, upon receiving a recommendation from the Secretary or authorized representative:

(i) Transfer control of culturally unidentifiable human remains to a non-federally recognized Indian group, or

(ii) Reinter culturally unidentifiable human remains according to State or other law.

(4) The Secretary may make a recommendation under paragraph (c)(3) of this section only with the written consent of all Indian tribes and Native Hawaiian organizations stipulated in paragraphs (c)(1) and (c)(2) of this section.

(5) A museum or Federal agency may also transfer control of funerary objects that are associated with culturally unidentifiable human remains. The Secretary recommends that museums and Federal agencies engage in such transfers whenever Federal or State law would not otherwise preclude them.

(d) Notification. (1) Disposition of culturally unidentifiable human remains and associated funerary objects under paragraph (c) may not occur until at least thirty (30) days after publication of a notice of inventory completion in the **Federal Register** as described in § 10.9.

(2) Within 30 days of publishing the notice of inventory completion, the National NAGPRA Program manager must:

(i) Revise the Review Committee inventory of culturally unidentifiable human remains and associated funerary objects to indicate the notice's publication; and

(ii) Make the revised Review Committee inventory of culturally unidentifiable human remains and associated funerary objects accessible to Indian tribes, Native Hawaiian organizations, non-federally recognized Indian groups, museums, and Federal agencies.

(e) Disputes. Any person who wishes to contest actions taken by museums or Federal agencies regarding the disposition of culturally unidentifiable human remains and associated funerary objects is encouraged to do so through informal negotiations to achieve a fair resolution of the matter. The Review Committee may facilitate the informal resolution of such disputes that are not resolved by good faith negotiation under § 10.17. In addition, the United States District Courts have jurisdiction over any action brought that alleges a violation of the Act.

6. Amend § 10.12 by:

A. Revising paragraphs (b)(ii), (iii), and (iv), and

B. Adding paragraph (b)(ix) to read as follows:

**§ 10.12 Civil penalties.**

* * * * *

(b) * * *

(1) * * *

(ii) After November 16, 1993, or a date specified under § 10.13, whichever deadline is applicable, has not completed summaries as required by the Act; or

(iii) After November 16, 1995, or a date specified under § 10.13, or the date specified in an extension issued by the Secretary, whichever deadline is applicable, has not completed inventories as required by the Act; or

(iv) After May 16, 1996, or 6 months after completion of an inventory under an extension issued by the Secretary, or 6 months after the date specified under § 10.13, whichever deadline is applicable, has not notified culturally affiliated Indian tribes and Native Hawaiian organizations; or

* * * * *

(ix) Does not offer to transfer control of culturally unidentifiable human remains for which it cannot prove right of possession under § 10.11.

* * * * *

Dated: October 2, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E7–20209 Filed 10–15–07; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–B–7740]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding these proposed regulatory flood elevations. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before January 14, 2008.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7740, to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*Administrative Procedure Act Statement.* This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Randolph County, Illinois, and Incorporated Areas** | | | | |
| Kaskaskia River | At confluence with Mississippi River | +395 | +392 | Village of Evansville, Unincorporated Areas of Randolph County. |
| | Randolph/Monroe County boundary (approximately 700 feet upstream Anna Lane extended). | +395 | +392 | |
| Mississippi River | Jackson/Randolph County boundary (approximately Cora Road extended). | +385 | +382 | City of Chester, Unincorporated Areas of Randolph County, Village of Kaskaskia, Village of Prairie Du Rocher, Village of Rockwood. |
| | Randolph/Monroe County boundary (approximately 3,025 feet downstream of Regtown Road extended). | +404 | +402 | |

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

**ADDRESSES**

**City of Chester**

Maps are available for inspection at 1330 Swanwick Street, Chester, IL 62233.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Unincorporated Areas of Randolph County**

Maps are available for inspection at 1 Taylor Street, Zoning Administrator, Chester, IL 62233.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Village of Evansville**

Maps are available for inspection at 403 Spring Street, P.O. Box 257, Evansville, IL 62242.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Village of Kaskaskia**

Maps are available for inspection at 1 Taylor Street, Chester, IL 62233.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Village of Prairie Du Rocher**

Maps are available for inspection at 209 Henry Street, P.O. Box 325, Prairie Du Rocher, IL 62277.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Village of Rockwood**

Maps are available for inspection at 900 Original Street, Rockwood, IL 62280.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

| | | | | |
|---|---|---|---|---|
| **Gibson County, Tennessee, and Incorporated Areas** | | | | |
| Clear Creek | At the confluence with Wolf Creek | None | +396 | Unincorporated Areas of Gibson County. |
| | Approximately 2,300 feet upstream of the confluence with Wolf Creek. | None | +401 | |
| Wolf Creek | Approximately 480 feet upstream of State Highway 104. | None | +395 | Unincorporated Areas of Gibson County. |
| | Approximately 2,211 feet upstream of State Highway 104. | None | +397 | |

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

**ADDRESSES**

**Unincorporated Areas of Gibson County**

Maps are available for inspection at 309 S. College Street, Trenton, TN 38382.

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Obion County, Tennessee, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Fifteenth Street Tributary | Approximately 1,740 feet upstream of the confluence with Richland Creek. | None | +284 | Unincorporated Areas of Obion County. |
| | At the confluence with Richland Creek | None | +284 | |
| Grove Creek | Approximately 2,070 feet downstream of State Highway 22. | None | +311 | Unincorporated Areas of Obion County. |
| | Approximately 950 feet downstream of State Highway 22. | None | +313 | |
| Hoosier Creek | Approximately 1,950 feet downstream of State Highway 3. | None | +314 | Unincorporated Areas of Obion County. |
| | Approximately 1,250 feet downstream of State Highway 3. | None | +314 | |
| Johnson Hurt Avenue Tributary. | At the confluence with Obion River | None | +284 | Unincorporated Areas of Obion County. |
| | Approximately 1,070 feet upstream of the confluence with Obion River. | None | +284 | |
| Obion River | Just upstream of State Highway 3 | None | +284 | Unincorporated Areas of Obion County. |
| | Approximately 2,400 feet upstream of State Highway 211. | None | +284 | |
| Drainage Canal | Just upstream of State Highway 3 | None | +284 | Unincorporated Areas of Obion County. |
| | Approximately 4,280 feet upstream of State Highway 211. | None | +284 | |
| Old Obion River Drainage Canal. | Just upstream of State Highway 3 | None | +284 | Unincorporated Areas of Obion County. |
| | Approximately 2,800 feet upstream of State Highway 211. | None | +284 | |
| Pursley Creek | Approximately 320 feet upstream of Nailing Drive. | None | +323 | Unincorporated Areas of Obion County. |
| | Approximately 800 feet downstream of State Highway 3. | None | +332 | |
| Richland Creek | At the confluence with Obion River | None | +284 | Unincorporated Areas of Obion County. |
| | Approximately 100 feet downstream of West Palestine Road. | None | +284 | |

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

**ADDRESSES**

**Unincorporated Areas of Obion County**

Maps are available for inspection at County Mayor, P.O. Box 236, Union City, TN 38281.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Rhea County, Tennessee, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Little Richland Creek Tributary. | At the confluence of Little Richland Creek | None | +695 | City of Dayton, Unincorporated Areas of Rhea County. |
| | Approximately 210 feet downstream of Back Valley Road. | None | +736 | |

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

**ADDRESSES**

**City of Dayton**

Maps are available for inspection at Dayton City Hall, 399 First Avenue, Dayton, TN 37321.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Unincorporated Areas of Rhea County**

Maps are available for inspection at Rhea County Property Assessor's Office, 375 Church Street, Suite 100, Dayton, TN 37321.

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. | | | | |
| **Weakley County, Tennessee, and Incorporated Areas** | | | | |
| Cane Creek | Approximately 50 feet upstream of Mount Pelia Road. | None | +337 | Unincorporated Areas of Weakley County. |
| | Approximately 450 feet downstream of the confluence with Cane Creek Tributary. | None | +344 | |
| Tributary | Just Upstream of Gardener Hyndsver Road | None | +363 | Unincorporated Areas of Weakley County. |
| | Approximately 70 feet downstream of Old Fulton Road. | None | +371 | |
| Mud Creek | Just downstream of State Route 22 | None | +365 | City of Dresden. |
| | Approximately 900 feet upstream of Boydenville Road. | None | +402 | |

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

**ADDRESSES**

**City of Dresden**

Maps are available for inspection at 117 W. Main Street, Dresden, TN 38225.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Unincorporated Areas of Weakley County**

Maps are available for inspection at 116 W. Main Street, Dresden, TN 38225.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

| **Dallas County, Texas, and Incorporated Areas** | | | | |
|---|---|---|---|---|
| Bear Creek | Approximately 505 feet upstream of the intersection with S. Belt Line Road. | +443 | +446 | City of Desoto, City of Glenn Heights. |
| | Approximately 548 feet upstream from intersection with N. County Line Road. | +475 | +472 | |
| Bentle Branch | Approximately 1820 feet downstream from intersection with Joe Wilson Road. | +649 | +647 | City of Dallas, City of Cedar Hill, City of Duncanville. |
| | Approximately 2960 feet upstream from the intersection with Joe Wilson Road. | +710 | +711 | |
| Cottonwood Creek (of Lake Ray Hubbard). | Approximately 40 feet downstream from intersection with Stonewall Road. | +451 | +447 | City of Dallas, City of Garland, City of Richardson, City of Rowlett, City of Wylie, Unincorporated Areas of Dallas County. |
| | Approximately 1670 feet upstream from intersection with Stonewall Road. | +456 | +455 | |
| Cottonwood Creek (of White Rock Creek). | Approximately 805 feet upstream from confluence with White Rock Creek. | +501 | +502 | City of Dallas, City of Richardson, Unincorporated Areas of Dallas County. |
| | Approximately 425 feet downstream of intersection with Spring Valley Road. | +561 | +563 | |
| Estes Branch | Approximately 413 feet downstream from intersection with Bruton Road. | +474 | +471 | City of Dallas. |
| | Approximately 373 feet downstream from intersection with Saint Augustine Drive. | +475 | +477 | |
| Furneaux Creek | Approximately 1296 feet downstream from intersection with Dickerson Parkway. | +453 | +455 | City of Carrollton. |
| | Approximately 2018 feet upstream from intersection with Dickerson Parkway. | +457 | +460 | |
| Hatfield Branch | At the intersection with Prairie Creek Road | +404 | +400 | City of Dallas. |
| | Approximately 4660 feet downstream from intersection with N. Master's Drive. | +485 | +482 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Hickory Creek | Approximately 920 feet downstream from intersection with S. Woody Road. | +400 | +399 | City of Balch Springs, City of Dallas. |
| | Approximately 410 feet downstream from intersection with Arrowdell Road. | +441 | +439 | |
| Hutton Branch | Approximately 436 feet downstream from intersection with Denton Drive. | +451 | +453 | City of Carrollton, Town of Addison. |
| | Approximately 920 feet downstream from intersection with Midway Road. | +596 | +597 | |
| Lake June Branch | Approximately 1530 feet downstream from intersection with Lake June Road. | +458 | +455 | City of Dallas. |
| | Approximately 157 feet downstream from intersection with Frostwood Street. | +489 | +491 | |
| Long Branch of Duck Creek. | Approximately 5710 feet downstream from intersection with Northwest Drive. | +461 | +458 | City of Mesquite, City of Dallas, City of Garland. |
| | Approximately 2230 feet downstream from intersection with Ferguson Road. | +522 | +520 | |
| North Mesquite Creek | Approximately 2380 feet downstream of intersection with Lawson Road. | +381 | +380 | City of Balch Springs, City of Mesquite, Town of Sunnyvale, Unincorporated Areas of Dallas County. |
| | Approximately 205 feet upstream from intersection with Via Del Nortway. | +505 | +507 | |
| Pleasant Branch | Approximately 440 feet downstream from intersection with Prairie Creek Road. | +465 | +462 | City of Dallas. |
| | Approximately 273 feet upstream from intersection with Bohannon Drive. | +497 | +498 | |
| Prairie Creek | Approximately 1510 feet downstream from intersection with LBJ Freeway. | +398 | +397 | City of Dallas. |
| | Approximately 540 feet downstream from intersection with Military Parkway. | +503 | +504 | |
| Pruitt Branch | Approximately 2423 feet downstream from intersection with Kingsfield Road. | +412 | +411 | City of Dallas. |
| | Approximately 696 feet upstream from intersection with Ryoak Drive. | +434 | +435 | |
| Richardson Branch | Approximately 540 feet downstream of intersection with Royal Lane. | +490 | +491 | City of Dallas. |
| | At intersection with Windy Crest Drive | +578 | +580 | |
| Rylie Branch | Approximately 984 feet downstream from the intersection with Saint Augustine Drive. | +412 | +410 | City of Dallas. |
| | Approximately 1388 feet upstream from intersection with Old Seagoville Road. | +452 | +456 | |
| South Mesquite Creek | Approximately 2007 feet downstream from intersection with Lawson Road. | +384 | +383 | City of Balch Springs, City of Dallas, City of Mesquite. |
| | Approximately 1905 feet downstream from intersection with Demaret Drive. | +548 | +547 | |
| Stream 2A4 | At intersection with Oak Hollow Drive | +459 | +461 | City of Rowlett, City of Dallas, Unincorporated Areas of Dallas County. |
| | Approximately 280 feet upstream from intersection with Oak Hollow Drive. | +480 | +477 | |
| Stream 2A5 | Approximately 155 feet downstream from intersection with Pecan Lane. | +440 | +439 | City of Rowlett, City of Dallas. |
| | Approximately 200 feet downstream from intersection with Spinnaker Cove. | +460 | +464 | |
| Stream 2B1 | Approximately 98 feet from the intersection with South Belt Line Road. | +427 | +429 | City of Balch Springs. |
| | Approximately 840 feet downstream from intersection with Eastgate Drive. | +463 | +464 | |
| Stream 2B2 | Approximately 150 feet upstream from intersection with Burton Road. | +432 | +434 | City of Mesquite. |
| | Approximately 880 feet upstream from intersection with I–635. | +448 | +450 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Stream 2B4 | Approximately 1930 feet downstream from the intersection with Military Parkway. | +442 | +437 | City of Mesquite, Unincorporated Areas of Dallas County. |
| | Approximately 57 feet upstream of intersection with Kearney Street. | +475 | +476 | |
| Stream 2B5 | Approximately 1650 feet upstream from intersection with Peachtree Road. | +463 | +465 | City of Mesquite. |
| | Approximately 4130 feet upstream from intersection with Peachtree Road. | +481 | +480 | |
| Stream 2B6 | Approximately 285 feet downstream from intersection with I–80. | +480 | +482 | City of Mesquite. |
| | Approximately 42 feet downstream from intersection with Baker Drive. | +500 | +503 | |
| Stream 2B7 | Approximately 800 feet downstream from intersection with Gus Thomasson Road. | +474 | +470 | City of Mesquite. |
| | Approximately 437 feet upstream from intersection with I–30. | +522 | +521 | |
| Stream 2B8 | Approximately 970 feet upstream from the intersection with I–635. | +470 | +472 | City of Mesquite. |
| | Approximately 326 feet downstream from intersection with I–80. | +495 | +493 | |
| Stream 2E2 | Approximately 1180 feet downstream from intersection with Liberty Grove Road. | +442 | +445 | City of Rowlett, City of Dallas. |
| | Approximately 3730 feet downstream from intersection with Liberty Grove Road. | +479 | +480 | |
| Stream 4C3 | Approximately 40 feet upstream from intersection with Kleberg Road. | +402 | +400 | City of Dallas. |
| | Approximately 1447 feet upstream from intersection with Woody Road. | +445 | +443 | |
| Stream 6A1 | Approximately 1054 feet downstream from intersection with Euclid Avenue. | +509 | +505 | Town of Highland Park. |
| | Approximately 95 feet downstream from intersection with Beverly Drive. | +520 | +518 | |
| Stream 6D4 | Approximately 190 feet from intersection with Scott Mill Road. | +498 | +502 | City of Carrollton. |
| | Approximately 128 feet downstream of E. Jackson Road. | +508 | +503 | |
| Stream 6D8 | Approximately 390 feet downstream from intersection with Ballantrae Road. | +560 | +562 | City of Carrollton. |
| | Approximately 780 feet downstream from intersection with Tarplex Road. | +612 | +614 | |
| Stream JC1 | Approximately 85 feet upstream from the intersection with Northwest 19th Street. | +462 | +459 | City of Grand Prairie. |
| | Approximately 940 feet upstream from intersection with I–30. | +499 | +501 | |
| West Fork of South Mesquite Creek. | Approximately 4020 feet downstream from the intersection with I–80. | +465 | +462 | City of Mesquite. |
| | Approximately 150 feet downstream from intersection with Town East Boulevard. | +501 | +503 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**City of Balch Springs**

Maps are available for inspection at 3117 Hickory Tree Road, Balch Springs, TX 75980.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Carrollton**

Maps are available for inspection at 1945 E. Jackson Road, Carrollton, TX 75006.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Cedar Hill**

Maps are available for inspection at 502 Cedar Street, Cedar Hill, TX 75104.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Dallas**

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

Maps are available for inspection at 320 E. Jefferson Blvd., Room 321, Dallas, TX 75203.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Desoto**

Maps are available for inspection at 211 E. Pleasant Run Rd., Building A, Desoto, TX 75115.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Duncanville**

Maps are available for inspection at 203 E. Wheatland Rd., Duncanville, TX 75116.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Garland**

Maps are available for inspection at 800 Main St., Garland, TX 75040.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Glenn Heights**

Maps are available for inspection at 1938 S. Hampton, Glenn Heights, TX 75154.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Grand Prairie**

Maps are available for inspection at 206 W. Church St., Grand Prairie, TX 75051.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Mesquite**

Maps are available for inspection at 1515 N. Galloway Ave., Mequite, TX 75185.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Richardson**

Maps are available for inspection at 411 W. Arapaho Rd., Richardson, TX 75083.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Rowlett**

Maps are available for inspection at 4000 Main St., Rowlett, TX 75088.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Wylie**

Maps are available for inspection at 114 N. Ballard Ave., Wylie, TX 75098.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Town of Addison**

Maps are available for inspection at 16801 Westgrove Drive, Addison, TX 75001.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Town of Highland Park**

Maps are available for inspection at 4700 Drexel Dr., Highland Park, TX 75205.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Town of Sunnyvale**

Maps are available for inspection at 537 Long Creek Rd., Sunnyvale, TX 75182.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Unincorporated Areas of Dallas County**

Maps are available for inspection at 509 Main St., Dallas, TX 75202.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Denton County, Texas, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Cooper Creek ..... | Approximately 2 feet upstream of intersection with N. Mayhill Road. | +572 | +570 | City of Denton, Unincorporated Areas of Denton County. |
| | Approximately 5 feet downstream of intersection with N. Locust Street. | +656 | +652 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Dudley Branch | Approximately 2455 feet downstream of intersection with Indian Road. | +452 | +449 | City of Carrollton, Town of Hebron. |
| | Approximately 2600 feet downstream from intersection with Standridge Drive. | +500 | +501 | |
| Fletcher Branch | Approximately ten feet downstream of intersection with Hickory Creek Road. | +554 | +555 | City of Denton, Unincorporated Areas of Denton County. |
| | Approximately 360 feet upstream of intersection with El Paso Street. | +610 | +612 | |
| Furneaux Creek | Approximately 1320 feet upstream from the intersection with Old Denton Road. | +470 | +464 | City of Carrollton, City of Plano, Town of Hebron. |
| | Approximately 115 feet from intersection with E. Hebron Parkway. | +550 | +549 | |
| Indian Creek | Approximately 180 ft from the intersection at Hebron Parkway. | +461 | +463 | City of Carrollton, City of Lewisville, City of Plano, City of The Colony, Town of Hebron, Unincorporated Areas of Denton County. |
| | Approximately 2940 feet from the intersection with the E. Old Denton Road bridge. | +476 | +477 | |
| Stream 6E1 | Approximately 980 feet downstream of intersection with N. Josey Lane. | +487 | +485 | City of Carrollton, City of Dallas. |
| | Approximately 1095 feet upstream from intersection with E. Frankford Road. | +523 | +524 | |
| Timber Creek | Approximately 4,925 feet downstream of intersection with Hebron Parkway. | +453 | +450 | City of Lewisville, Town of Double Oak, Town of Flower Mound. |
| | Approximately 295 feet upstream from the intersection with S. Woodland Trail. | +628 | +626 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**City of Carrollton**

Maps are available for inspection at 1945 E. Jackson Rd., Carrollton, TX 75006.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Dallas**

Maps are available for inspection at 320 E. Jefferson Blvd., Room 321, Dallas, TX 75203.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Denton**

Maps are available for inspection at 215 E. McKinney, Denton, TX 76201.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Lewisville**

Maps are available for inspection at 1197 W. Main St., Lewisville, TX 75067.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Plano**

Maps are available for inspection at 1520 Avenue K, Plano, TX 75086.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of The Colony**

Maps are available for inspection at 5151 N. Colony Blvd., The Colony, TX 75056.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Town of Double Oak**

Maps are available for inspection at 1100 Cross Timber Dr., Double Oak, TX 75067.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

**Town of Flower Mound**

Maps are available for inspection at 2121 Cross Timbers Rd, Flower Mound, TX 75028.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Town of Hebron**

Maps are available for inspection at 4624 Charles St., Carrollton, TX 75010.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Unincorporated Areas of Denton County**

Maps are available for inspection at 306 N. Loop 288, Suite 115, Denton, TX 76201.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 9, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E7–20382 Filed 10–15–07; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–B–7739]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before January 14, 2008.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7739, to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*Administrative Procedure Act Statement.* This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies

that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Unincorporated Areas of Richland County, South Carolina** | | | | |
| Congaree River** (with levee). | Approximately 2.7 miles downstream of the confluence of Gills Creek. | None | *128 | Unincorporated Areas of Richland County. |
| | Approximately 0.5 mile upstream of the CSX Transportation crossing. | *155 | *152 | |
| Congaree River** (without levee). | Approximately 42.2 miles upstream of the mouth ..... | None | *131 | Unincorporated Areas of Richland County. |
| | Approximately 2.3 miles upstream of the Southeastern Beltway (West Bound). | *149 | *140 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed upstream and downstream BFEs, and all BFEs located on the stream reach between the two listed herein. Please check the Flood Insurance Rate Map (see below) for exact locations of all BFEs to be changed.

**Unincorporated Areas of Richland County**

Maps are available for inspection at the Planning Management Director's Office, 2020 Hampton Street, Columbia, SC.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 11, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E7–20356 Filed 10–15–07; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

**[Docket No. FEMA–D–7824]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding these proposed regulatory flood elevations. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before January 14, 2008.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–D–7824, to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*Administrative Procedure Act Statement.* This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Johnson County, Kansas, and Incorporated Areas** | | | | |
| Bain Creek | At the confluence with Niles Creek | None | +946 | Unincorporated Areas of Johnson County. |
| | Approximately 800 feet upstream of West 183rd Street. | None | +1025 | |
| Tributary B | At the confluence with Bain Creek | None | +998 | Unincorporated Areas of Johnson County, City of Spring Hill. |
| | At Lone Elm Road | None | +1023 | |
| Big Bull Creek | At the County Boundary | None | +936 | Unincorporated Areas of Johnson County. |
| | Approximately 5,060 feet upstream of the confluence of Big Bull Creek Tributary J. | None | +1011 | |
| Tributary A | At the County Boundary | None | +947 | Unincorporated Areas of Johnson County. |
| | Approximately 8,260 feet upstream of the County Boundary. | None | +1001 | |
| Tributary C | At the confluence with with Big Bull Creek | None | +938 | Unincorporated Areas of Johnson County. |
| | Approximately 3,130 feet upstream of the confluence with Big Bull Creek. | None | +946 | |
| Tributary D | At the confluence with Big Bull Creek | None | +941 | Unincorporated Areas of Johnson County, City of Gardner. |
| | Approximately 950 feet upstream of Interstate Highway 35 Ramp. | None | +1027 | |
| Tributary E | At the confluence with Big Bull Creek | None | +949 | Unincorporated Areas of Johnson County, City of Gardner. |
| | Approximately 6,050 feet upstream of Waverly Road | None | +1037 | |
| Tributary F | At the confluence with Big Bull Creek | None | +961 | Unincorporated Areas of Johnson County. |
| | Approximately 660 feet upstream of West 183rd Street. | None | +1019 | |
| Tributary H | At the confluence with Big Bull Creek | None | +981 | Unincorporated Areas of Johnson County. |
| | Approximately 1,350 feet upstream of the confluence with Big Bull Creek. | None | +986 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Tributary I | At the confluence with Big Bull Creek | None | +988 | Unincorporated Areas of Johnson County. |
| | Approximately 2,180 feet upstream of West 183rd Street. | None | +999 | |
| Blue River | Approximately 5,025 feet downstream of County Boundary. | +867 | +865 | Unincorporated Areas of Johnson County, City of Leawood, City of Overland Park. |
| | At the confluence of Coffee Creek | +909 | +913 | |
| Tributary A | At the County Boundary | None | +905 | City of Leawood. |
| | At West 135th Street | None | +924 | |
| Tributary B | At the County Boundary | +868 | +865 | City of Leawood, City of Overland Park. |
| | At West 143rd Street | None | +883 | |
| Tributary C | At the confluence with Blue River | +897 | +898 | Unincorporated Areas of Johnson County. |
| | Approximately 325 feet upstream of West 167th Street. | +897 | +902 | |
| Tributary D | At the confluence with Blue River | +898 | +900 | Unincorporated Areas of Johnson County. |
| | Approximately 565 feet upstream of the confluence with Blue River. | +898 | +900 | |
| Tributary E | At the confluence with Blue River | +899 | +900 | Unincorporated Areas of Johnson County. |
| | Approximately 1,055 feet upstream of the confluence with Blue River. | None | +904 | |
| Tributary F | At the confluence with Blue River | +902 | +907 | City of Overland Park. |
| | At U.S. Highway 69 | None | +959 | |
| Brush Creek | At State Line Road | +853 | +856 | City of Fairway, City of Mission Hills, City of Mission Woods, City of Overland Park, City of Prairie Village. |
| | Approximately 3,600 feet upstream of Nall Avenue | +981 | +982 | |
| Camp Branch | Approximately 420 feet upstream of Union Pacific Railroad. | +894 | +895 | Unincorporated Areas of Johnson County, City of Overland Park. |
| | Approximately 6,230 feet upstream of West 199th Street. | None | +1057 | |
| Tributary A | Approximately 1,275 feet upstream of the confluence with Camp Branch. | None | +898 | Unincorporated Areas of Johnson County. |
| | Approximately 900 feet upstream of the confluence of Camp Branch Tributary AB. | None | +1021 | |
| Tributary AA | At the confluence with Camp Branch Tributary A | None | +962 | Unincorporated Areas of Johnson County. |
| | Approximately 6,900 feet upstream of the confluence with Camp Branch Tributary A. | None | +1038 | |
| Tributary C | At the confluence with Camp Branch | +942 | +941 | Unincorporated Areas of Johnson County. |
| | Approximately 490 feet upstream of the confluence with Camp Branch. | +942 | +945 | |
| Tributary D | At the confluence with Camp Branch | +1006 | +999 | Unincorporated Areas of Johnson County. |
| | Approximately 1,750 feet upstream of the confluence with Camp Branch. | None | +1008 | |
| Tributary E | At the confluence with Camp Branch | +1007 | +1000 | Unincorporated Areas of Johnson County. |
| | Approximately 815 feet upstream of the confluence of Camp Branch Tributary EA. | None | +1017 | |
| Tributary EA | At the confluence with Camp Branch Tributary E | +1008 | +1005 | Unincorporated Areas of Johnson County. |
| | Approximately 380 feet upstream of the confluence with Camp Branch Tributary E. | +1008 | +1007 | |
| Camp Creek | At the confluence with Cedar Creek | +789 | +798 | Unincorporated Areas of Johnson County, City of Desoto. |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | Approximately 1,070 feet upstream of the confluence of Camp Creek Tributary F. | None | +966 | |
| Tributary A | At the confluence with Camp Creek | +836 | +837 | Unincorporated Areas of Johnson County. |
| | Approximately 2,220 feet upstream of Waverly Road | None | +882 | |
| Tributary B | Approximately 370 feet upstream of the confluence with Camp Creek. | None | +923 | Unincorporated Areas of Johnson County. |
| | At the confluence with Camp Creek | +920 | +923 | |
| Tributary D | At the confluence with Camp Creek | +937 | +938 | Unincorporated Areas of Johnson County. |
| | Approximately 1,135 feet upstream of the confluence with Camp Creek. | None | +940 | |
| Tributary E | At the confluence with Camp Creek | +939 | +942 | Unincorporated Areas of Johnson County. |
| | Approximately 580 feet upstream of the confluence with Camp Creek. | None | +944 | |
| Captain Creek | At the County Boundary | None | +820 | Unincorporated Areas of Johnson County, City of Desoto. |
| | At County Line Road | None | +922 | |
| East | Approximately 30 feet upstream of Burlington Northern & Santa Fe Railway. | +797 | +798 | Unincorporated Areas of Johnson County. |
| | Approximately 2,670 feet upstream of West 95th Street. | None | +845 | |
| Tributary E | At the confluence with Captain Creek | None | +902 | Unincorporated Areas of Johnson County. |
| | Approximately 3,780 feet upstream of Evening Star Road. | None | +922 | |
| Tributary K | At County Line Road | None | +952 | Unincorporated Areas of Johnson County. |
| | Approximately 1,000 feet upstream of County Line Road. | None | +953 | |
| Cedar Creek | Approximately 800 feet upstream of the confluence of Cedar Creek Tributary B. | +785 | +786 | Unincorporated Areas of Johnson County, City of Desoto, City of Lenexa, City of Olathe. |
| | At Interstate Highway 35/U.S. Highway 50 | None | +1024 | |
| Tributary B | Approximately 200 feet upstream of Cedar Creek Road. | +785 | +786 | City of Desoto. |
| | Approximately 210 feet upstream of Cedar Creek Road. | +785 | +786 | |
| Tributary C | At the confluence with Cedar Creek | +785 | +787 | City of Desoto. |
| | Approximately 260 feet upstream of Cedar Creek Road. | None | +794 | |
| Tributary D | Approximately 2,235 feet upstream of the confluence with Cedar Creek. | None | +789 | City of Desoto. |
| | At the confluence with Cedar Creek | +785 | +789 | |
| Tributary E | Approximately 350 feet upstream of Cedar Creek Road. | None | +798 | City of Desoto. |
| | At the confluence with Cedar Creek | +791 | +798 | |
| Tributary G | At the confluence with Cedar Creek | +797 | +805 | Unincorporated Areas of Johnson County, City of Lenexa, City of Olathe. |
| | Approximately 440 feet upstream of the confluence of Cedar Creek Tributary GA. | None | +847 | |
| Tributary H | At the confluence with Cedar Creek | +808 | +810 | City of Olathe. |
| | Just upstream of South Bluestem Parkway | None | +921 | |
| Tributary HA | Approximately 80 feet upstream of the confluence with Cedar Creek Tributary H. | +884 | +883 | Unincorporated Areas of Johnson County, City of Olathe. |
| | Just upstream of State Highway 10 | None | +942 | |
| Tributary HB | At the confluence with Cedar Creek Tributary H | None | +889 | City of Olathe. |
| | Approximately 1,650 feet upstream of the confluence with Cedar Creek Tributary H. | None | +920 | |
| Tributary L | At the confluence with Cedar Creek | +868 | +872 | Unincorporated Areas of Johnson County, City of Olathe. |
| | Just downstream of West 151st Street | None | +1016 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Tributary N | At the confluence with Cedar Creek | +941 | +943 | City of Olathe. |
| | At South Ward Cliff Drive | None | +953 | |
| Tributary O | At the confluence with Cedar Creek | +942 | +943 | City of Olathe. |
| | At Old U.S. Highway 56 | None | +1021 | |
| Tributary P | At the confluence with Cedar Creek | None | +974 | City of Olathe. |
| | Approximately 1,070 feet upstream of Burlington Northern & Santa Fe Railway. | None | +1007 | |
| Tributary Q | At the confluence with Cedar Creek | None | +979 | Unincorporated Areas of Johnson County, City of Olathe. |
| | Approximately 270 feet upstream of the confluence of Cedar Creek Tributary QC. | None | +1061 | |
| Tributary QA | At the confluence with Cedar Creek Tributary Q | None | +1008 | Unincorporated Areas of Johnson County, City of Olathe. |
| | Just downstream of Burlington Northern & Santa Fe Railway. | None | +1037 | |
| Tributary S | At the confluence with Cedar Creek | None | +1003 | Unincorporated Areas of Johnson County. |
| | At West 167th Street | None | +1018 | |
| Tributary T | At the confluence with Cedar Creek | None | +1008 | Unincorporated Areas of Johnson County, City of Olathe. |
| | Approximately 450 feet upstream of Clare Road | None | +1031 | |
| Clear Creek | At the confluence with Mill Creek | +783 | +784 | City of Lenexa, City of Shawnee. |
| | Approximately 2,040 feet upstream of Clare Road | None | +948 | |
| Tributary F | At the confluence with Clear Creek | None | +830 | City of Shawnee. |
| | Just downstream of West 71st Street | None | +901 | |
| Tributary G | At the confluence with Clear Creek | None | +909 | City of Shawnee, City of Lenexa. |
| | Approximately 410 feet upstream of Mize Boulevard. | None | +919 | |
| Coffee Creek | At the confluence with Blue River | +909 | +913 | Unincorporated Areas of Johnson County, City of Olathe, City of Overland Park. |
| | Approximately 3,800 feet upstream of South Mur-Len Road. | None | +1049 | |
| Tributary A | At the confluence with Coffee Creek | +917 | +923 | Unincorporated Areas of Johnson County. |
| | Approximately 1,250 feet upstream of the confluence with Coffee Creek. | None | +930 | |
| Tributary B | At the confluence with Coffee Creek | +925 | +926 | Unincorporated Areas of Johnson County. |
| | Approximately 430 feet upstream of the confluence with Coffee Creek. | None | +929 | |
| Tributary C | At the confluence with Coffee Creek | +942 | +943 | City of Overland Park. |
| | Approximately 3,220 feet upstream of the confluence with Coffee Creek. | None | +968 | |
| Tributary D | At the confluence with Coffee Creek | +956 | +959 | Unincorporated Areas of Johnson County. |
| | Approximately 900 feet upstream of the confluence with Coffee Creek. | None | +960 | |
| Tributary E | At the confluence with Coffee Creek | None | +966 | City of Overland Park. |
| | Approximately 370 feet upstream of Quivira Road | None | +975 | |
| Tributary F | At the confluence with Coffee Creek | None | +970 | City of Overland Park. |
| | Approximately 1,340 feet upstream of the confluence with Coffee Creek. | None | +979 | |
| Tributary H | At the confluence with Coffee Creek | None | +982 | City of Overland Park. |
| | Approximately 2,940 feet upstream of the confluence with Coffee Creek. | None | +997 | |
| Tributary I | At the confluence with Coffee Creek | None | +988 | Unincorporated Areas of Johnson County. |
| | Approximately 2,330 feet upstream of the confluence with Coffee Creek Tributary IA. | None | +1019 | |
| Tributary IA | At the confluence with Coffee Creek Tributary I | None | +1008 | Unincorporated Areas of Johnson County. |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | Approximately 1,600 feet upstream of the confluence with Coffee Creek Tributary I. | None | +1025 | |
| Tributary J | At the confluence with Coffee Creek | None | +991 | Unincorporated Areas of Johnson County. |
| | Approximately 2,150 feet upstream of the confluence with Coffee Creek. | None | +1001 | |
| Tributary K | At the confluence with Coffee Creek | None | +1004 | Unincorporated Areas of Johnson County. |
| | Approximately 910 feet upstream of Lackman Road | None | +1013 | |
| Tributary L | At the confluence with Coffee Creek | None | +1049 | City of Olathe. |
| | Approximately 1,775 feet upstream of the confluence with Coffee Creek. | None | +1059 | |
| Tributary P | At the confluence with Coffee Creek | None | +1048 | City of Olathe. |
| | Approximately 2,630 feet upstream of the confluence with Coffee Creek. | None | +1058 | |
| Coon Creek | At the confluence with Mill Creek | +827 | +836 | City of Lenexa. |
| | Approximately 9,800 feet upstream of the confluence of Coon Creek Tributary B. | None | +948 | |
| Tributary B | At the confluence with Coon Creek | None | +861 | City of Lenexa. |
| | Approximately 1,900 feet upstream of Monticello Road. | None | +927 | |
| Dykes Branch | At State Line Road | +860 | +874 | City of Prairie Village, City of Leawood. |
| | At West 83rd Street | None | +928 | |
| Tributary B | At the confluence with Dykes Branch | +878 | +881 | City of Leawood. |
| | Approximately 1,320 feet upstream of West 85th Terrace. | None | +899 | |
| Hayes Creek | At the confluence with Mill Creek | +768 | +769 | City of Shawnee. |
| | Approximately 3,670 feet upstream of Holliday Drive | None | +791 | |
| Indian Creek | Approximately 600 feet downstream of State Line Road Northbound. | +830 | +829 | City of Leawood, City of Olathe, City of Overland Park. |
| | At West 159th Street | None | +1062 | |
| Bypass No. 1 | At the convergence with Indian Creek | +918 | +920 | City of Overland Park. |
| | At the divergence from Indian Creek | +921 | +923 | |
| Tributary No. 1 | Approximately 180 feet downstream of West 103rd Street. | +859 | +858 | City of Overland Park. |
| | At Roe Avenue | None | +897 | |
| Tributary No. 2 | At the confluence with Indian Creek | +864 | +865 | City of Overland Park. |
| | Approximately 1,100 feet upstream of Metcalf Avenue/U.S. Highway 169. | None | +923 | |
| Tributary No. 3 | Approximately 450 feet upstream of the confluence with Indian Creek. | +870 | +869 | City of Overland Park. |
| | Approximately 920 feet upstream of West 93rd Street | None | +934 | |
| Tributary No. 4 | Approximately 50 feet upstream of the confluence with Indian Creek. | +874 | +875 | City of Overland Park. |
| | At Antioch Road | None | +923 | |
| Tributary No. 5 | At the confluence with Indian Creek | +887 | +889 | City of Overland Park. |
| | Approximately 205 feet upstream of Knox Drive (North). | None | +951 | |
| Tributary No. 5 Bypass A. | At the convergence with Indian Creek Tributary No. 5 | +904 | +901 | City of Overland Park. |
| | Approximately 110 feet downstream of the divergence from Indian Creek Tributary No. 5. | +914 | +915 | |
| Tributary No. 5 Bypass B. | At the convergence with Indian Creek Tributary No. 5 | +930 | +929 | City of Overland Park. |
| | At the divergence from Indian Creek Tributary No. 5 | +937 | +936 | |
| Tributary No. 5 Bypass C. | At the convergence with Indian Creek Tributary No. 5 | +938 | +936 | City of Overland Park. |
| | At the divergence from Indian Creek Tributary No. 5 | None | +950 | |
| Tributary No. 6 | At the confluence with Indian Creek | +997 | +1000 | City of Olathe. |
| | Just downstream of West 143rd Street | +1013 | +1014 | |
| James Branch | Just upstream of the confluence with Indian Creek | +833 | +832 | City of Leawood. |
| | Approximately 660 feet upstream of Ensley Lane | +889 | +891 | |
| Kill Creek | Approximately 820 feet upstream of West 83rd Street | +791 | +792 | City of Gardner, City of Desoto, Unincorporated Areas of Johnson County. |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | Approximately 5,750 feet upstream of West 167th Street. | None | +1036 | |
| Tributary C | At the confluence with Kill Creek | None | +798 | City of Desoto. |
| | Just upstream of Lexington Avenue | None | +814 | |
| Tributary CA | At the confluence with Kill Creek Tributary C | None | +814 | City of Desoto, Unincorporated Areas of Johnson County. |
| | At Lexington Avenue | None | +847 | |
| Tributary F | At the confluence with Kill Creek | None | +813 | Unincorporated Areas of Johnson County. |
| | Approximately 7,480 feet upstream of the confluence with Kill Creek. | None | +872 | |
| Tributary G | At the confluence with Kill Creek | None | +820 | Unincorporated Areas of Johnson County. |
| | Approximately 3,380 feet upstream of String Town Road. | None | +862 | |
| Tributary H | At the confluence with Kill Creek | None | +832 | Unincorporated Areas of Johnson County. |
| | Just downstream of Homestead Lane | None | +889 | |
| Tributary I | At the confluence with Kill Creek | None | +869 | Unincorporated Areas of Johnson County. |
| | Approximately 1,865 feet upstream of the confluence of Kill Creek Tributary IA. | None | +924 | |
| Tributary J | At the confluence with Kill Creek | None | +879 | Unincorporated Areas of Johnson County. |
| | At Walnut View Drive | None | +885 | |
| Tributary K | At the confluence with Kill Creek | None | +883 | City of Gardner, Unincorporated Areas of Johnson County. |
| | Approximately 240 feet upstream of the confluence of Kill Creek Tributary KC. | None | +1003 | |
| Tributary KA | At the confluence with Kill Creek Tributary K | None | +937 | City of Gardner. |
| | Approximately 1,320 feet upstream of the confluence with Kill Creek Tributary K. | None | +948 | |
| Tributary KC | At the confluence with Kill Creek Tributary K | None | +1002 | City of Gardner, Unincorporated Areas of Johnson County. |
| | Approximately 2,200 feet upstream of West 167th Street. | None | +1010 | |
| Tributary L | At the confluence with Kill Creek | None | +887 | Unincorporated Areas of Johnson County. |
| | Approximately 1,030 feet upstream of the confluence with Kill Creek. | None | +892 | |
| Tributary M | At the confluence with Kill Creek | None | +905 | Unincorporated Areas of Johnson County. |
| | Approximately 6,210 feet upstream of the confluence with Kill Creek. | None | +950 | |
| Tributary N | At the confluence with Kill Creek | None | +919 | Unincorporated Areas of Johnson County. |
| | Approximately 3,080 feet upstream of Gardner Road | None | +1003 | |
| Tributary O | At the confluence with Kill Creek | None | +945 | Unincorporated Areas of Johnson County. |
| | Just downstream of West 151st Street | None | +947 | |
| Tributary P | At the confluence with Kill Creek | None | +996 | Unincorporated Areas of Johnson County. |
| | At West 159th Street | None | +1009 | |
| West Tributary C | Approximately 930 feet upstream of the confluence with Kill Creek West Tributary B. | +796 | +803 | Unincorporated Areas of Johnson County. |
| | Approximately 1,120 feet upstream of Edgerton Road | None | +837 | |
| Lake Quivira | Approximately 800 feet downstream of County Boundary. | None | +829 | City of Lake Quivira, City of Shawnee. |
| | Approximately 3,000 feet upstream of Lakeshore South Street. | None | +854 | |
| Tributary A | At the confluence with Lake Quivira | None | +829 | City of Lake Quivira, City of Shawnee. |
| | Approximately 1,930 feet upstream of Lakeshore West Street. | None | +850 | |
| Tributary AA | At the confluence with Lake Quivira Tributary A | None | +829 | City of Lake Quivira. |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | At Lakeshore West Street | None | +832 | |
| Little Bull Creek | At the County Boundary | None | +939 | Unincorporated Areas of Johnson County. |
| | Approximately 700 feet upstream of West 199th Street. | None | +1010 | |
| Tributary A | At the confluence with Little Bull Creek | None | +953 | Unincorporated Areas of Johnson County. |
| | Approximately 5,105 feet upstream of Cedar Niles Road. | None | +1004 | |
| Little Cedar Creek | At the confluence with Cedar Creek | +839 | +845 | Unincorporated Areas of Johnson County, City of Olathe. |
| | Just downstream of Old U.S. Highway 56 | None | +1023 | |
| Tributary B | At the confluence with Little Cedar Creek | +865 | +866 | Unincorporated Areas of Johnson County, City of Olathe. |
| | Approximately 1,430 feet upstream of West 127th Street. | None | +1005 | |
| Tributary C | At the confluence with Little Cedar Creek | +879 | +881 | Unincorporated Areas of Johnson County, City of Olathe. |
| | Just downstream of College Boulevard | None | +980 | |
| Tributary CA | At the confluence with Little Cedar Creek Tributary C | None | +957 | City of Olathe. |
| | Approximately 1,650 feet upstream of the confluence with Little Cedar Creek Tributary C. | None | +961 | |
| Tributary D | At the confluence with Little Cedar Creek | +904 | +909 | City of Olathe, Unincorporated Areas of Johnson County. |
| | Approximately 3,210 feet upstream of the confluence with Little Cedar Creek. | None | +938 | |
| Tributary F | At the confluence with Little Cedar Creek | +971 | +973 | City of Olathe. |
| | Just downstream of West Santa Fe Street | +973 | +978 | |
| Little Mill Creek. | At the confluence with Mill Creek | +794 | +792 | City of Lenexa, City of Shawnee. |
| | At Brentwood Drive | +977 | +981 | |
| Tributary A | At the confluence with Little Mill Creek | +794 | +792 | City of Shawnee. |
| | At Midland Drive | None | +806 | |
| Tributary B | At the confluence with Little Mill Creek | +857 | +858 | City of Shawnee. |
| | Approximately 1,720 feet upstream of the confluence with Little Mill Creek. | None | +871 | |
| Tributary C | Approximately 260 feet upstream of the confluence with Little Mill Creek. | +860 | +861 | City of Shawnee. |
| | Approximately 460 feet upstream of the confluence with Little Mill Creek. | None | +865 | |
| Tributary D | At the confluence with Little Mill Creek | +883 | +882 | City of Shawnee. |
| | Approximately 2,400 feet upstream of West 71st Street. | None | +920 | |
| Tributary E | At the confluence with Little Mill Creek | +889 | +891 | City of Shawnee, City of Lenexa. |
| | Approximately 940 feet upstream of the confluence with Little Mill Creek. | None | +896 | |
| Tributary F | At the confluence with Little Mill Creek | +893 | +897 | City of Shawnee, City of Lenexa. |
| | Approximately 880 feet upstream of the confluence of Little Mill Creek Tributary FA. | None | +922 | |
| Tributary FA | At the confluence with Little Mill Creek Tributary F | None | +915 | City of Shawnee. |
| | Approximately 430 feet upstream of Blackfish Parkway. | None | +923 | |
| Tributary H | At the confluence with Little Mill Creek | +922 | +927 | City of Lenexa. |
| | Approximately 1,340 feet upstream of the confluence with Little Mill Creek. | +922 | +932 | |
| Tributary I | At the confluence with Little Mill Creek | +952 | +956 | City of Lenexa. |
| | Approximately 790 feet upstream of Greenway Lane | None | +961 | |
| Martin Creek | At the confluence with Big Bull Creek | None | +951 | City of Edgerton, Unincorporated Areas of Johnson County. |
| | Approximately 4,900 feet upstream of Old State Highway 56. | None | +1022 | |

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|---|---|---|---|---|
| | | Effective | Modified | |
| Tributary C | At the confluence with Martin Creek | +960 | +963 | City of Edgerton, Unincorporated Areas of Johnson County. |
| | Approximately 6,550 feet upstream of Burlington Northern & Santa Fe Railway. | None | +1013 | |
| Tributary CA | At the confluence with Martin Creek Tributary C | +969 | +973 | City of Edgerton. |
| | Approximately 2,670 feet upstream of First Street | None | +1008 | |
| Tributary D | At the confluence with Martin Creek | +967 | +972 | Unincorporated Areas of Johnson County. |
| | Approximately 335 feet upstream of West 183rd Street. | None | +1022 | |
| Tributary E | At the confluence with Martin Creek | +982 | +984 | Unincorporated Areas of Johnson County. |
| | Approximately 13,450 feet upstream of 191st Street | None | +1037 | |
| Tributary F | At the confluence with Martin Creek | None | +1001 | Unincorporated Areas of Johnson County. |
| | Approximately 5,500 feet upstream of the confluence with Martin Creek. | None | +1027 | |
| Massey Creek | At State Line Road | None | +968 | Unincorporated Areas of Johnson County. |
| | Approximately 415 feet upstream of Mission Road | None | +1003 | |
| Tributary A | At the confluence with Massey Creek | None | +983 | Unincorporated Areas of Johnson County. |
| | Approximately 4,850 feet upstream of the confluence of Massey Creek Tributary AB. | None | +1034 | |
| Tributary AA | At the confluence with Massey Creek Tributary A | None | +985 | Unincorporated Areas of Johnson County. |
| | Approximately 4,070 feet upstream of West 207th Street. | None | +1028 | |
| Tributary AB | At the confluence with Massey Creek Tributary A | None | +1004 | Unincorporated Areas of Johnson County. |
| | Approximately 4,525 feet upstream of the confluence with Massey Creek Tributary A. | None | +1027 | |
| Mill Creek | Just upstream of Wilder Road | +768 | +769 | City of Shawnee, City of Lenexa, City of Olathe, Unincorporated Areas of Johnson County. |
| | Approximately 2,000 feet upstream of East Cedar Street. | +1017 | +1016 | |
| Tributary A | At the confluence with Mill Creek | +775 | +773 | City of Shawnee. |
| | Just downstream of Woodland Drive | +775 | +773 | |
| Tributary B | At the confluence with Mill Creek | +783 | +785 | City of Shawnee. |
| | Approximately 530 feet upstream of Barker Road | None | +786 | |
| Tributary D | At the confluence with Mill Creek | +800 | +798 | City of Shawnee. |
| | Approximately 1,050 feet upstream of Woodland Drive. | None | +823 | |
| Tributary E | At the confluence with Mill Creek | +806 | +803 | City of Shawnee, City of Lenexa. |
| | Approximately 1,800 feet upstream of the confluence of Mill Creek Tributary EB. | None | +879 | |
| Tributary EA | At the confluence with Mill Creek Tributary E | None | +874 | City of Lenexa. |
| | Approximately 2,400 feet upstream of the confluence with Mill Creek Tributary E. | None | +876 | |
| Tributary EB | At the confluence with Mill Creek Tributary E | None | +874 | City of Lenexa, City of Shawnee. |
| | Just downstream of Barkley Drive | None | +888 | |
| Tributary G | At the confluence with Mill Creek | +858 | +857 | City of Lenexa. |
| | Approximately 1,340 feet upstream of the confluence with Mill Creek. | None | +870 | |
| Tributary H | At the confluence with Mill Creek | +868 | +869 | City of Lenexa, City of Olathe, Unincorporated Areas of Johnson County. |
| | Just downstream of College Boulevard | None | +968 | |
| Tributary HA | At the confluence with Mill Creek Tributary H | +895 | +896 | City of Lenexa. |
| | Approximately 790 feet upstream of Renner Boulevard. | None | +940 | |
| Tributary HB | At the confluence with Mill Creek Tributary H | None | +957 | City of Lenexa. |

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|---|---|---|---|---|
| | | Effective | Modified | |
| | Just downstream of Eicher Drive | None | +982 | |
| Tributary J | At the confluence with Mill Creek | +916 | +919 | City of Olathe. |
| | Approximately 1,940 feet upstream of the confluence with Mill Creek. | None | +926 | |
| Tributary L | At the confluence with Mill Creek | +928 | +932 | City of Olathe. |
| | Just downstream of South Ridgeview Road | None | +945 | |
| Tributary M | Approximately 720 feet upstream of Burlington & Northern Santa Fe Railway. | None | +950 | City of Olathe. |
| | At the confluence with Mill Creek | +943 | +950 | |
| Tributary N | Approximately 580 feet upstream of South Nelson Road. | None | +956 | City of Olathe. |
| | At the confluence with Mill Creek | +950 | +956 | |
| Tributary NA | At the confluence with Mill Creek Tributary N | +950 | +956 | City of Olathe. |
| | Just downstream of South Nelson Road | None | +957 | |
| Tributary O | At the confluence with Mill Creek | +952 | +959 | City of Olathe. |
| | Just downstream of East Kansas City Road | None | +1007 | |
| Negro Creek | At the confluence with Blue River | +869 | +868 | City of Overland Park, City of Leawood. |
| | At U.S. Highway 69 | +986 | +989 | |
| Tributary A | At the confluence with Negro Creek | +872 | +870 | City of Leawood, City of Overland Park. |
| | Approximately 300 feet upstream of the confluence of Negro Creek Tributary AC. | None | +926 | |
| Tributary AB | At the confluence with Negro Creek Tributary A | +917 | +921 | City of Leawood. |
| | Approximately 1,050 feet upstream of the confluence with Negro Creek Tributary A. | None | +926 | |
| Tributary AC | At the confluence with Negro Creek Tributary A | None | +923 | City of Leawood. |
| | At West 143rd Street | None | +924 | |
| Tributary B | At the confluence with Negro Creek | +884 | +888 | City of Leawood. |
| | Approximately 740 feet upstream of the confluence with Negro Creek. | None | +892 | |
| Tributary C | At the confluence with Negro Creek | +903 | +908 | City of Leawood. |
| | At Nall Avenue | None | +917 | |
| Tributary D | At the confluence with Negro Creek | +920 | +923 | City of Overland Park. |
| | At West 157th Street | None | +947 | |
| Tributary E | At the confluence with Negro Creek | +924 | +925 | City of Overland Park. |
| | At West 156th Street | +926 | +932 | |
| Niles Creek | At the County Boundary | None | +940 | Unincorporated Areas of Johnson County, City of Gardner. |
| | Approximately 100 feet upstream of U.S. Highway 56 | None | +1032 | |
| Tributary A | At the confluence with Niles Creek | None | +974 | Unincorporated Areas of Johnson County. |
| | Approximately 4,310 feet upstream of the confluence with Niles Creek. | None | +986 | |
| Tributary C | At the confluence with Niles Creek | None | +1003 | Unincorporated Areas of Johnson County. |
| | Approximately 3,020 feet upstream of the confluence with Niles Creek. | None | +1011 | |
| North Branch Indian Creek | Approximately 220 feet upstream of the confluence with Indian Creek. | +905 | +906 | City of Lenexa, City of Overland Park. |
| | Approximately 2,920 feet upstream of West 103rd Street. | None | +979 | |
| Tributary A | At the confluence with North Branch Indian Creek | +925 | +927 | City of Overland Park. |
| | Just downstream of West 103rd Street | +947 | +944 | |
| Tributary B | At the confluence with North Branch Indian Creek | +935 | +937 | City of Overland Park, City of Lenexa. |
| | Approximately 600 feet upstream of Hauser Street | None | +980 | |
| Pickering Creek | At the confluence with Captain Creek | None | +922 | Unincorporated Areas of Johnson County. |
| | Approximately 3,920 feet upstream of West 167th Street. | None | +979 | |
| Tributary A | At the confluence with Pickering Creek | None | +940 | Unincorporated Areas of Johnson County. |
| | Approximately 3,150 feet upstream of the confluence of Pickering Creek Tributary AA. | None | +959 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Rock Creek | At the confluence with Brush Creek | +863 | +868 | City of Mission, City of Fairway, City of Mission Hills, City of Roeland Park. |
| | Approximately 400 feet upstream of the confluence with Rock Creek Tributary G. | +964 | +960 | |
| Tributary A | Approximately 100 feet downstream of Shawnee Mission Parkway. | None | +892 | City of Roeland Park, City of Fairway. |
| | Approximately 3,000 feet upstream of Shawnee Mission Parkway. | None | +936 | |
| Tributary B | Approximately 300 feet downstream of Shawnee Mission Parkway. | None | +898 | City of Roeland Park, City of Fairway. |
| | Approximately 1,100 feet upstream of West 53rd Street. | None | +943 | |
| Tributary D | Approximately 450 feet downstream of West 54th Terrace. | None | +931 | City of Roeland Park. |
| | Approximately 560 feet upstream of Sherwood Drive | None | +963 | |
| Tributary E | At Johnson Drive | None | +935 | City of Roeland Park, City of Mission. |
| | At West 57th Street | None | +940 | |
| Spoon Creek | At the confluence with Kill Creek | None | +821 | Unincorporated Areas of Johnson County. |
| | Approximately 1,280 feet upstream of West 167th Street. | None | +988 | |
| Tributary B | At the confluence with Spoon Creek | None | +919 | Unincorporated Areas of Johnson County. |
| | Approximately 4,380 feet upstream of Sunflower Road. | None | +937 | |
| Tributary C | At the confluence with Spoon Creek | None | +927 | Unincorporated Areas of Johnson County. |
| | Approximately 450 feet upstream of the confluence with Spoon Creek. | None | +928 | |
| Tributary E | At the confluence with Spoon Creek | None | +958 | Unincorporated Areas of Johnson County. |
| | Approximately 3,120 feet upstream of Sunflower Road. | None | +975 | |
| Spring Creek | At West 215th Street | None | +940 | Unincorporated Areas of Johnson County, City of Spring Hill. |
| | Approximately 3,000 feet upstream of West 199th Street. | None | +1029 | |
| Sweetwater Creek | Approximately 11,000 feet downstream of West 215th Street. | None | +960 | Unincorporated Areas of Johnson County, City of Spring Hill. |
| | Approximately 500 feet upstream of West 207th Street. | None | +1031 | |
| Tributary A | At the confluence with Sweetwater Creek | None | +997 | Unincorporated Areas of Johnson County, City of Spring Hill. |
| | Approximately 5,180 feet upstream of the confluence with Sweetwater Creek. | None | +1029 | |
| Tributary B | At the confluence with Sweetwater Creek | None | +997 | Unincorporated Areas of Johnson County, City of Spring Hill. |
| | Approximately 2,775 feet upstream of the confluence with Sweetwater Creek. | None | +1012 | |
| Ten Mile Creek | At West 215th Street | None | +1013 | Unincorporated Areas of Johnson County. |
| | Approximately 405 feet upstream of Lackman Road | None | +1024 | |
| Tomahawk Creek | At the confluence with Indian Creek | +845 | +843 | City of Leawood. |
| | At College Boulevard | +845 | +844 | |
| Tributary No. 12B1 | Approximately 70 feet upstream of the confluence with Tomahawk Creek Tributary No. 12. | +923 | +924 | City of Overland Park. |
| | Just upstream of West 133rd Street | +924 | +925 | |
| Tributary No. 13 | At the confluence with Tomahawk Creek | +929 | +930 | City of Overland Park. |
| | Approximately 1,050 feet upstream of the confluence with Tomahawk Creek. | +931 | +932 | |

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|---|---|---|---|---|
| | | Effective | Modified | |
| Tributary No. 13B1 | At the confluence with Tomahawk Creek | +935 | +934 | City of Overland Park. |
| | Approximately 50 feet upstream of the confluence with Tomahawk Creek. | +935 | +934 | |
| Tributary No. 4 | Approximately 100 feet upstream of the confluence with Tomahawk Creek. | +864 | +865 | City of Leawood. |
| | Approximately 400 feet upstream of the confluence with Tomahawk Creek. | +864 | +865 | |
| Tributary No. 9 | Approximately 220 feet upstream of the confluence with Tomahawk Creek. | +890 | +891 | City of Overland Park. |
| | Approximately 820 feet upstream of the confluence with Tomahawk Creek. | +892 | +893 | |
| Tucker Branch | At West 215th Street | None | +1000 | Unincorporated Areas of Johnson County. |
| | Approximately 5,025 feet upstream of Renner Road | None | +1022 | |
| Turkey Creek | Approximately 125 feet downstream of Lamar Avenue | +843 | +844 | City of Overland Park, City of Lenexa, City of Merriam, City of Mission, City of Shawnee. |
| | Approximately 1,525 feet upstream of Nieman Road | None | +1007 | |
| Tributary C | At the confluence with Turkey Creek | +894 | +895 | City of Merriam. |
| | Approximately 1,225 feet upstream of Merriam Drive | None | +897 | |
| Tributary F | At the confluence with Turkey Creek | +931 | +934 | City of Merriam, City of Shawnee. |
| | Approximately 200 feet upstream of Flint Street | None | +974 | |
| Tributary J | At East Frontage Road | +971 | +977 | City of Overland Park. |
| | Approximately 1,880 feet upstream of Mastin Street | None | +992 | |
| Wolf Creek | At the confluence with Blue River | +909 | +913 | City of Overland Park, Unincorporated Areas of Johnson County. |
| | At West 183rd Street | None | +1041 | |
| Tributary B | At the confluence with Wolf Creek | +914 | +918 | City of Overland Park, Unincorporated Areas of Johnson County. |
| | At U.S. Highway 69 | None | +953 | |
| Tributary C | At the confluence with Wolf Creek | +931 | +934 | Unincorporated Areas of Johnson County. |
| | At West 207th Street | None | +1045 | |
| Tributary CC | At the confluence with Wolf Creek Tributary C | None | +1018 | Unincorporated Areas of Johnson County. |
| | At Antioch Road | None | +1019 | |
| Tributary CD | At the confluence with Wolf Creek Tributary C | None | +1034 | Unincorporated Areas of Johnson County. |
| | At Antioch Road | None | +1042 | |
| Tributary D | At the confluence with Wolf Creek | +935 | +939 | Unincorporated Areas of Johnson County. |
| | Approximately 1,140 feet upstream of the confluence with Wolf Creek. | +935 | +953 | |
| Tributary E | At the confluence with Wolf Creek | +938 | +941 | Unincorporated Areas of Johnson County. |
| | At West 199th Street | None | +1026 | |
| Tributary EA | At the confluence with Wolf Creek Tributary E | None | +1006 | Unincorporated Areas of Johnson County. |
| | At Quivira Road | None | +1025 | |
| Tributary EB | At the confluence with Wolf Creek Tributary E | None | +1021 | Unincorporated Areas of Johnson County. |
| | At West 199th Street | None | +1028 | |
| Tributary F | At the confluence with Wolf Creek | +946 | +950 | Unincorporated Areas of Johnson County. |
| | Approximately 720 feet upstream of the confluence with Wolf Creek. | +946 | +953 | |
| Tributary G | At the confluence with Wolf Creek | None | +966 | Unincorporated Areas of Johnson County. |
| | At West 191st Street | None | +1024 | |
| Tributary GA | At the confluence with Wolf Creek Tributary G | None | +993 | Unincorporated Areas of Johnson County. |
| | At West 191st Street | None | +1008 | |
| Tributary H | At the confluence with Wolf Creek | None | +990 | Unincorporated Areas of Johnson County. |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | At West 183rd Street | None | +997 | |
| Tributary I | At the confluence with Wolf Creek | None | +997 | Unincorporated Areas of Johnson County. |
| | At West 183rd Street | None | +999 | |
| Tributary J | At the confluence with Wolf Creek | None | +1003 | Unincorporated Areas of Johnson County. |
| | Approximately 2,550 feet upstream of West 183rd Street. | None | +1021 | |
| Tributary K | At the confluence with Wolf Creek | None | +1012 | Unincorporated Areas of Johnson County. |
| | Approximately 1,100 feet upstream of the confluence with Wolf Creek. | None | +1015 | |
| Tributary L | At the confluence with Wolf Creek | None | +1016 | Unincorporated Areas of Johnson County. |
| | Approximately 1,220 feet upstream of the confluence with Wolf Creek. | None | +1034 | |
| Tributary M | At the confluence with Wolf Creek | None | +1018 | Unincorporated Areas of Johnson County. |
| | Approximately 925 feet upstream of the confluence with Wolf Creek. | None | +1019 | |
| Tributary N | At the confluence with Wolf Creek | None | +1020 | Unincorporated Areas of Johnson County. |
| | Approximately 4,970 feet upstream of the confluence with Wolf Creek. | None | +1041 | |
| Tributary NA | At the confluence with Wolf Creek Tributary N | None | +1025 | Unincorporated Areas of Johnson County. |
| | Approximately 1,000 feet upstream of the confluence with Wolf Creek Tributary N. | None | +1040 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**City of Desoto**

Maps are available for inspection at 33150 W. 83rd Street, De Soto, KS 66018.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Edgerton**

Maps are available for inspection at 404 E. Nelson, Edgerton, KS 66021.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Fairway**

Maps are available for inspection at 5252 Belinder Road, Fairway, KS 66205.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Gardner**

Maps are available for inspection at 120 E. Main Street, Gardner, KS 66030.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Lake Quivira**

Maps are available for inspection at 10 Crescent Boulevard, Lake Quivira, KS 66217.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Leawood**

Maps are available for inspection at 4820 Town Center Drive, Leawood, KS 66211.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Lenexa**

Maps are available for inspection at 12350 W. 87th Street Parkway, Lenexa, KS 66215.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Merriam**

Maps are available for inspection at 9000 W. 62nd Terrace, Merriam, KS 66202.

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Mission**

Maps are available for inspection at 6090 Woodson, Mission, KS 66202
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Mission Hills**

Maps are available for inspection at 6300 State Line Road, Mission Hills, KS 66208.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Mission Woods**

Maps are available for inspection at 4700 Rainbow Boulevard, Westwood, KS 66205.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Olathe**

Maps are available for inspection at 100 W. Santa Fe Drive, Olathe, KS 66061.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Overland Park**

Maps are available for inspection at 8500 Santa Fe Drive, Overland Park, KS 66212.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Prairie Village**

Maps are available for inspection at 7700 Mission Road, Prairie Village, KS 66208.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Roeland Park**

Maps are available for inspection at 4600 W. 51st Street, Roeland Park, KS 66205.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Shawnee**

Maps are available for inspection at 11110 Johnson Drive, Shawnee, KS 66203.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**City of Spring Hill**

Maps are available for inspection at 401 N. Madison Street, Spring Hill, KS 66083.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Unincorporated Areas of Johnson County**

Maps are available for inspection at 111 S. Cherry Street, Suite 3500, Olathe, KS 66061.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Cherokee County, North Carolina and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Bates Creek | At the confluence with Hanging Dog Creek | None | +1,529 | Unincorporated Areas of Cherokee County, Eastern Band of Cherokee Indians. |
| | Approximately 0.8 mile upstream of the confluence with Hanging Dog Creek. | None | +1,633 | |
| Bearpaw Creek | At the confluence with Hiwassee River | None | +1,529 | Unincorporated Areas of Cherokee County. |
| | Approximately 80 feet downstream of Lower Bear Paw Road (State Road 1312). | None | +1,534 | |
| Beaverdam Creek | At the confluence with Hiwassee River | None | +1,529 | Unincorporated Areas of Cherokee County. |
| | Approximately 70 feet downstream of the confluence of Cook Creek. | None | +1,734 | |
| Beech Creek | At the confluence with Hiwassee River | None | +1,529 | Unincorporated Areas of Cherokee County. |
| | Approximately 2.4 miles upstream of the confluence with Hiwassee River. | None | +1,548 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Brasstown Creek | At the confluence with Hiwassee River | None | +1,587 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.4 mile upstream of Brasstown Road | None | +1,605 | |
| Brown Creek | At the confluence with Valley River | None | +1,692 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.6 mile upstream of the confluence with Valley River. | None | +1,709 | |
| Cane Creek | At the confluence with Nottely River | None | +1,529 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.9 mile upstream of U.S. Highway 64 | None | +1,536 | |
| Chambers Creek | At the confluence with Hiwassee River | None | +1,529 | Unincorporated Areas of Cherokee County. |
| | Approximately 1.7 miles upstream of the confluence with Hiwassee River. | None | +1,534 | |
| Davis Creek | At the confluence with Hanging Dog Creek | None | +1,767 | Unincorporated Areas of Cherokee County |
| | Approximately 20 feet downstream of the confluence with Dockey Creek and Bald Creek. | None | +2,054 | |
| Grape Creek | At the confluence with Hiwassee River | None | +1,529 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.9 mile upstream of Joe Brown Highway (State Road 1326). | None | +1,530 | |
| Hanging Dog Creek | At the confluence with Hiwassee River | None | +1,529 | Unincorporated Areas of Cherokee County, Eastern Band of Cherokee Indians. |
| | Approximately 1,300 feet upstream of Running Deer Lane. | None | +1,914 | |
| Hiwassee River | Approximately 1.5 miles downstream of Apalachia Lake Dam. | None | +1,162 | Unincorporated Areas of Cherokee County, Town of Murphy. |
| | Approximately 875 feet downstream of Mission Dam | None | +1,620 | |
| Junaluska Creek | At the confluence with Valley River | None | +1,783 | Unincorporated Areas of Cherokee County, Town of Andrews. |
| | At the confluence of Bear Branch | None | +2,169 | |
| Little Brasstown Creek | At the confluence with Brasstown Creek | None | +1,605 | Unincorporated Areas of Cherokee County. |
| | Approximately 1.8 miles upstream of Folk School Road (State Road 1565). | None | +1,627 | |
| Martin Creek | At the confluence with Hiwassee River | None | +1,534 | Unincorporated Areas of Cherokee County. |
| | Approximately 1,740 feet upstream of Brasstown Road (State Road 1564). | None | +1,655 | |
| McClellan Creek | At the confluence with Tatham Creek | None | +1,852 | Unincorporated Areas of Cherokee County. |
| | Approximately 1,200 feet upstream of Pisgah Road (State Road 1507). | None | +1,903 | |
| Morgan Creek | At the confluence with Valley River | None | +1,594 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.5 mile upstream of the confluence with Valley River. | None | +1,601 | |
| Nottely River | At the confluence with Hiwassee River | None | +1,529 | Unincorporated Areas of Cherokee County. |
| | Approximately 2.2 miles downstream of U.S. Highway 64. | None | +1,534 | |
| Owl Creek | At the confluence with Hanging Dog Creek | None | +1,677 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.5 mile upstream of Owl Creek Road (State Road 1340). | None | +1,904 | |
| Peachtree Creek | At the confluence with Hiwassee River | None | +1,564 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.5 mile upstream of Upper Peachtree Road (State Road 1535). | None | +1,798 | |
| Persimmon Creek | At the confluence with Hiwassee River | None | +1,529 | Unincorporated Areas of Cherokee County. |
| | Approximately 440 feet upstream of U.S. Highway 64 | None | +1,821 | |

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Phillips Creek | At the confluence with Tatham Creek | None | +1,852 | Unincorporated Areas of Cherokee County. |
| | Approximately 1,610 feet upstream of Sunflower Lane | None | +2,360 | |
| Rapier Mill Creek | Approximately 0.6 mile upstream of the confluence with Nottely River. | +1570 | +1,571 | Unincorporated Areas of Cherokee County. |
| | At the confluence of South Fork Rapier Mill Creek | None | +1,596 | |
| Ricket Branch | At the confluence with Valley River | None | +1,679 | Unincorporated Areas of Cherokee County. |
| | Approximately 200 feet downstream of Airport Road (State Road 1428). | None | +1,706 | |
| Rogers Creek | At the confluence with Valley River | None | +1,572 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.7 mile upstream of the confluence with Valley River. | None | +1,594 | |
| Slow Creek | Approximately 75 feet downstream of the downstream most crossing of Canyon Road (State Road 1527). | None | +1,678 | Unincorporated Areas of Cherokee County. |
| | Approximately 660 feet upstream of the upstream most crossing of Canyon Road (State Road 1527). | None | +1,727 | |
| South Fork Rapier Mill Creek | At the confluence with Rapier Mill Creek | None | +1,596 | Unincorporated Areas of Cherokee County. |
| | Approximately 1.9 miles upstream of State Route 60 | None | +1,674 | |
| South Shoal Creek | At the confluence with Hiwassee River | None | +1,282 | Unincorporated Areas of Cherokee County. |
| | Approximately 2.7 miles upstream of Shoal Creek Road (State Road 1145). | None | +1,972 | |
| Tatham Creek | At the confluence with Valley River | None | +1,772 | Unincorporated Areas of Cherokee County, Town of Andrews. |
| | At the confluence of McClellan Creek and Phillips Creek. | None | +1,852 | |
| Valley River | At the confluence with Hiwassee River | None | +1,530 | Unincorporated Areas of Cherokee County, Town of Andrews, Town of Murphy. |
| | Approximately 1.0 mile upstream of Cherokee Avenue | None | +3,678 | |
| Whitiaker Branch | At the confluence with Valley River | None | +1,696 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.8 mile upstream of the confluence with Valley River. | None | +1,715 | |
| Worm Creek | At the confluence with Valley River | None | +1,825 | Unincorporated Areas of Cherokee County. |
| | Approximately 0.9 mile upstream of Robinson Road (State Road 1502). | None | +2,240 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**Eastern Band of Cherokee Indians**

Maps are available for inspection at Ginger Lynn Welch Complex, 810 Aquoni Road, Cherokee, North Carolina.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Town of Andrews**

Maps are available for inspection at Andrews Town Hall, 1101 Main Street, Andrews, North Carolina.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Town of Murphy**

Maps are available for inspection at Murphy Town Hall, 5 Wofford Street, Murphy, North Carolina.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Unincorporated Areas of Cherokee County**

Maps are available for inspection at Cherokee County Mapping Department/GIS, County Courthouse, 39 Peachtree Street, Suite 104, Murphy, North Carolina.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

| Flooding source(s) | Location of referenced elevation | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Fayette County, Tennessee, and Incorporated Areas** | | | | |
| Wolf River Unnamed Tributary 1 (Controlled by Wolf River). | Approximately 1,600 feet upstream of the confluence with Wolf River. | None | +300 | City of Piperton, Unincorporated Areas of Fayette County. |
| | Approximately 5,170 feet upstream of the confluence with Wolf River. | None | +300 | |
| Wolf River Unnamed Tributary 2 (Controlled by Wolf River). | Approximately 2,750 feet upstream of the confluence with Wolf River. | None | +300 | Unincorporated Areas of Fayette County. |
| | Approximately 4,300 feet upstream of the confluence with Wolf River. | None | +300 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**City of Piperton**

Maps are available for inspection at 3575 Highway 196, Piperton, TN 38017.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**Unincorporated Areas of Fayette County**

Maps are available for inspection at 16265 Highway 64, Suite 4, Somerville, TN 38068.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.''

Dated: October 9, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E7–20357 Filed 10–15–07; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–B–7741]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before January 14, 2008.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7741, to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered.

A letter acknowledging receipt of any comments will not be sent.

*Administrative Procedure Act Statement.* This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Flooding source(s) | Location of referenced elevation** | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Orange County, New York, and Incorporated Areas** | | | | |
| Black Meadow Creek | At confluence with Otter Kill | +378 | +377 | Town of Goshen. |
| | Approximately 800 feet upstream of confluence with Otter Kill. | +378 | +377 | |
| Cold Brook | Approximately 300 feet downstream of Beach Road | +439 | +435 | Town of Deer Park, City of Port Jervis. |
| | At confluence with Neversink River | +438 | +435 | |
| Delaware River | At County boundary | +425 | +426 | Town of Deer Park, City of Port Jervis. |
| | Approximately 645 feet upstream of Rail Road | +469 | +470 | |
| Monhagen Brook | Approximately 0.4 mile downstream of Abe Isseks Drive. | None | +465 | City of Middletown, Town of Wallkill, Town of Wawayanda. |
| | Approximately 1,200 feet upstream of Mt. Hope Road | None | +606 | |
| Moodna Creek | Approximately 1,100 feet downstream of spillway at Towns of Blooming Grove and Cornwall corporate limits. | +259 | +260 | Town of Blooming Grove, Town of Cornwall, Village of Washingtonville. |
| | At the confluence with Otter Kill and Cromline Creek | +321 | +319 | |
| Neversink River | At the confluence with Delaware River | +425 | +430 | City of Port Jervis, Town of Deer Park. |
| | Approximately 275 feet upstream of Paradise Road | +645 | +649 | |
| Otter Kill | Approximately 1.2 miles upstream of Sora Wells Trail | +366 | +365 | Town of Goshen. |
| | Approximately 1.4 miles upstream of State Route 17 | None | +470 | |
| Tributary 12 | At the confluence with Otter Kill | +368 | +365 | Town of Goshen. |
| | Approximately 150 feet upstream of Craigville Road | +397 | +395 | |
| Perry Creek | At the confluence with Moodna Creek | None | +306 | Town of Blooming Grove, Village of Washingtonville. |
| | Approximately 500 feet upstream of Clove Road | None | +537 | |
| Pine Tree Brook | At confluence with Ramapo River Reach 2 | +580 | +582 | Village of Monroe. |
| | Approximately 1,020 feet upstream of confluence with Ramapo River Reach 2. | +581 | +582 | |
| Quaker Creek | Approximately 100 feet upstream of confluence with Browns Creek. | +399 | +398 | Village of Florida. |
| | Approximately 150 feet upstream of Roosevelt Avenue. | None | +456 | |
| Ramapo River Reach 2 | Approximately 2,150 feet downstream of Arden House Road. | None | +518 | Village of Harriman, Town of Monroe, Town of Woodbury, Village of Monroe. |
| | Approximately 1.4 miles upstream of Reynolds Road | None | +838 | |
| Tributary 1 | At confluence with Ramapo River Reach 2 | +522 | +519 | Village of Harriman, Town of Woodbury. |
| | Approximately 1,100 feet upstream of Meadow Avenue. | +522 | +519 | |

| Flooding source(s) | Location of referenced elevation** | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Tributary 26 | At confluence with Ramapo River Reach 2 | +579 | +581 | Village of Monroe. |
| | Approximately 800 feet upstream of confluence with Ramapo River Reach 2. | +580 | +581 | |
| Rio Grande | Approximately 300 feet downstream of State Route 17. | +411 | +412 | Town of Goshen, Village of Goshen. |
| | Approximately 650 feet upstream of Greenwich Avenue. | +433 | +430 | |
| Tributary 4 | At the confluence with Rio Grande | None | +427 | Village of Goshen. |
| | Approximately 2,160 feet upstream of Scotchtown Road. | None | +440 | |
| Satterly Creek | At the confluence with Moodna Creek | +314 | +312 | Town of Blooming Grove, Village of Washingtonville. |
| | At the confluence of Satterly Creek Tributary #5 | +344 | +346 | |
| South Tributary to Wawayanda Creek. | At the confluence with Wawayanda Creek | +519 | +521 | Town of Warwick, Village of Warwick. |
| | Approximately 2 miles upstream of Galloway Road | None | +778 | |
| Wallkill River Tributary 6 | At the confluence with Wallkill River | None | +331 | Town of Montgomery. |
| | Approximately 1,800 feet upstream of State Route 17 | None | +392 | |
| Wawayanda Creek | Approximately 2,500 feet downstream of Howe Street | +506 | +507 | Village of Warwick, Town of Warwick. |
| | Approximately 0.9 mile upstream of Forester Avenue | +521 | +522 | |
| Woodbury Creek | At Creamery Hill Road | +250 | +251 | Town of Cornwall, Town of Woodbury. |
| | Approximately 1,190 feet upstream of Estrada Road | None | +487 | |
| Tributary 11 | At the confluence with Woodbury Creek | None | +487 | Town of Woodbury. |
| | Approximately 2,700 feet upstream of Dunderburg Road. | None | +772 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and includes BFEs located on the stream reach between the two listed herein. Please check the Flood Insurance Rate Map (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**COMMUNITY NAME**

**City of Middletown**
Maps are available for inspection at Middletown City Hall, 16 James Street, Middletown, NY.

**City of Port Jervis**
Maps are available for inspection at Port Jervis City Municipal Building, 14–20 Hammond Street, Port Jervis, NY.

**Town of Blooming Grove**
Maps are available for inspection at Blooming Grove Town Hall, 6 Horton Road, Blooming Grove, NY.

**Town of Cornwall**
Maps are available for inspection at Cornwall Town Hall, 183 Main Street, Cornwall, NY.

**Town of Deer Park**
Maps are available for inspection at Deer Park Town Building Inspector's Office, 420 Route 209, Hugenot, NY.

**Town of Goshen**
Maps are available for inspection at Goshen Town Hall, 41 Webster Street, NY.

**Town of Monroe**
Maps are available for inspection at Monroe Town Building Department, 11 Stage Road, Monroe, NY.

**Town of Montgomery**
Maps are available for inspection at Montgomery Town Hall, 110 Bracken Road, Montgomery, NY.

**Town of Wallkill**
Maps are available for inspection at Wallkill Town Hall, 99 Tower Drive, Middletown, NY.

**Town of Warwick**
Maps are available for inspection at Warwick Town Municipal Building, 132 Kings Highway, Warwick, NY.

**Town of Wawayanda**
Maps are available for inspection at Wawayanda Town Hall, 80 Ridgeberry Hill Road, Slate Hill, NY.

**Town of Woodbury**
Maps are available for inspection at Highlands Town Hall, 511 Route 32, Highland Mills, NY.

**Village of Florida**
Maps are available for inspection at Florida Village Hall, 33 South Main Street, Florida, NY.

| Flooding source(s) | Location of referenced elevation** | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Village of Goshen** | | | | |
| Maps are available for inspection at Goshen Village Hall, 276 Main Street, Goshen, NY. | | | | |
| **Village of Harriman** | | | | |
| Maps are available for inspection at Harriman Village Hall, 1 Church Street, Harriman, NY. | | | | |
| **Village of Monroe** | | | | |
| Maps are available for inspection at Monroe Village Hall, 7 Stage Road, Monroe, NY. | | | | |
| **Village of Warwick** | | | | |
| Maps are available for inspection at Village Hall, 77 Main Street, Warwick, NY. | | | | |
| **Village of Washingtonville** | | | | |
| Maps are available for inspection at Washingtonville Village Hall, 29 West Main Street, Washingtonville, NY. | | | | |

[Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'']

Dated: October 10, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E7–20388 Filed 10–15–07; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AU83**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Monterey Spineflower (Chorizanthe pungens var. pungens)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended Required Determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on the proposed revised designation of critical habitat for the Monterey Spineflower (*Chorizanthe pungens* var. *pungens*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis of the proposed revised critical habitat designation and amended Required Determinations for the proposal. The draft economic analysis for *Chorizanthe pungens* var. *pungens* forecasts future costs associated with conservation efforts for *Chorizanthe pungens* var. *pungens* of approximately $17 million (undiscounted) over a 20-year period as a result of the proposed revised designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be approximately $13 million ($0.85 million annualized) at a 3 percent discount rate or approximately $9.6 million ($0.85 million annualized) at a 7 percent discount rate. The amended Required Determinations section provides our determination concerning compliance with applicable statutes and Executive Orders that we have deferred until the information from the draft economic analysis of this proposal was available. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft economic analysis, and the amended Required Determinations section. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until October 31, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of several methods:

1. By mail or hand-delivery to: Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

2. By electronic mail (e-mail) to: *fw8mosp@fws.gov.* Please see the Public Comments Solicited section below for other information about electronic filing.

3. By fax to: the attention of Diane Steeck at 805–644–3958.

4. Via the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Diane Steeck, Ecologist, or Connie Rutherford, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, at the address listed in **ADDRESSES** (telephone 805–644–1766; facsimile 805–644–3958). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Public Comments Solicited

We will accept written comments and information during this reopened comment period on the proposed revised critical habitat designation for *Chorizanthe pungens* var. *pungens* published in the **Federal Register** on December 14, 2006 (71 FR 75189), and our draft economic analysis of the proposed revised designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

• The amount and distribution of *Chorizanthe pungens* var. *pungens* habitat,

• What areas occupied at the time of listing and that contain features essential to the conservation of the species we should include in the designation and why, and

• What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Our mapping methodology and criteria used for determining critical habitat, as well as any additional information on features essential to the conservation of the species.

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(5) Information on whether, and, if so, how many of, the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Chorizanthe pungens* var. *pungens,* and how many were either already in place at the time of listing or enacted for other reasons.

(6) Information on whether the draft economic analysis identifies all State and local costs and benefits attributable to the proposed revised critical habitat designation, and information on any costs or benefits that have been inadvertently overlooked.

(7) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat.

(8) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat.

(9) Information on areas that could potentially be disproportionately impacted by designation of critical habitat for *Chorizanthe pungens* var. *pungens.* The draft economic analysis indicates the potential economic effects of undertaking conservation efforts for this species in particular areas within Monterey and Santa Cruz counties. Based on this information, we may consider excluding portions of these areas from the final designation per our discretion under section 4(b)(2) of the Act.

(10) Any foreseeable economic, national security, or other potential impacts resulting from the proposed revised designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; the reasons why our conclusion that the proposed revised designation of critical habitat would not result in a disproportionate effect on small businesses should or should not warrant further consideration; and other information that would indicate that the designation of revised critical habitat would or would not have any impacts on small entities.

(11) Information on whether the draft economic analysis appropriately identifies all costs that could result from the proposed revised designation.

(12) Whether the benefit of excluding any particular area from the revised critical habitat designation outweighs the benefit of including the area in the designation under section 4(b)(2) of the Act.

(13) The existence of any conservation or management plans being implemented by California State Parks, Bureau of Land Management (BLM) on former Fort Ord, or other public or private land management agencies or owners that we should consider for exclusion from the designation under section 4(b)(2) of the Act. Please include information on any benefits (educational, regulatory, etc.) of including or excluding lands from this proposed revised designation.

(14) Economic data on the incremental effects that would result from designating any particular area as revised critical habitat, since it is our intent to include the incremental costs attributed to the revised critical habitat designation in the final economic analysis.

(15) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

The Secretary shall designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

Comments and information submitted during the initial comment period on the December 14, 2006, proposed rule (71 FR 75189) need not be resubmitted as they will be incorporated into the public record as part of this comment period and will be fully considered in preparation of the final rule. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat will take into consideration all comments and any additional information we receive during both comment periods. On the basis of public comment on the draft economic analysis, the critical habitat proposal, and the final economic analysis, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

If you use e-mail to submit your comments, please include ''Attn: RIN 1018–AU83'' in your e-mail subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate revised critical habitat, will be available for public inspection, by appointment during normal business hours, at the Ventura Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed critical habitat rule and the draft economic analysis are available on the Internet at: *http://www.fws.gov/ventura/*. You may also obtain copies of the proposed revised critical habitat rule and the draft economic analysis by contacting the Ventura Fish and Wildlife Office (see **ADDRESSES**), or by calling 805–644–1766 extension 301.

## Background

Pursuant to the terms of a March 2006 settlement agreement, we agreed to submit for publication in the **Federal Register** a proposed revised critical habitat designation for *Chorizanthe pungens* var. *pungens* on or before December 7, 2006. We published a proposed rule to designate revised critical habitat for *C. p.* var. *pungens* on December 14, 2006 (71 FR 75189). The proposed revised critical habitat totals approximately 11,032 acres (ac) (4,466 hectares (ha)) for *C. p.* var. *pungens* in Monterey and Santa Cruz Counties, California.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are

found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, in accordance with section 7(a)(2) of the Act.

**Draft Economic Analysis**

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the December 14, 2006, proposed rule to designate critical habitat for *Chorizanthe pungens* var. *pungens* (71 FR 75189), we have prepared a draft economic analysis of the proposed revised critical habitat designation for *C. p.* var. *pungens*.

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for *Chorizanthe pungens* var. *pungens*; some of these costs will likely be incurred regardless of whether revised critical habitat is designated. The draft economic analysis provides estimated costs of conservation-related measures that are likely to be associated with future economic activities that may adversely affect the habitat within the proposed revised boundaries over a 20-year period. It also considers past costs associated with conservation of the species from the time it was listed (February 4, 1994; 59 FR 5499) until the year the proposed revised critical habitat rule was published (December 14, 2006; 71 FR 75189). For a further description of the methodology of the analysis, see section 1.4 (Approach to Estimating Economic Impacts) of the draft economic analysis.

The draft economic analysis describes economic impacts of *Chorizanthe pungens* var. *pungens* conservation efforts associated with the following activities: (1) Removal and control of invasive, nonnative plant species; (2) recreational activities, including foot traffic, and off-road vehicles; (3) overspray of pesticides from agricultural operations; (4) munitions clean-up methods on former military ranges that remove and chip all standing vegetation; (5) expansion of unregulated vehicle parking on the sand dunes; and (6) vegetation clearing associated with road and trail maintenance. With regard to the removal and control of invasive, nonnative plant species, as well as recreational activities management, we acknowledge that most or all of these activities identified have been, and will continue to be, directed at the protection of several sensitive species, including *C. p.* var. *pungens*. Therefore, in the draft economic analysis, the attribution of such costs solely to *C. p.* var. *pungens* likely overstates the economic impact of the critical habitat designation.

The draft economic analysis estimates pre-designation costs associated with the conservation of the species to be approximately $5.2 million (undiscounted). Discounted costs are estimated to be approximately $6.2 million at a 3 percent discount rate or approximately $7.9 million at a 7 percent discount rate. The draft economic analysis estimates post-designation costs associated with conservation efforts for *Chorizanthe pungens* var. *pungens* to be approximately $17 million (undiscounted) over a 20-year period as a result of the proposed designation of revised critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be approximately $13 million ($0.85 million annualized) at a 3 percent discount rate or approximately $9.6 million ($0.85 million annualized) at a 7 percent discount rate.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Chorizanthe pungens* var. *pungens*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of revised critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *C. p.* var. *pungens* in areas containing features essential to the conservation of the species. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The draft analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the draft analysis looks retrospectively at costs that have been incurred since the date *Chorizanthe pungens* var. *pungens* was listed as threatened (February 4, 1994; 59 FR 5499) and considers those costs that may occur in the 20 years following a designation of critical habitat. Forecasts of economic conditions and other factors beyond this point would be speculative.

As stated earlier, we solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion would not result in the extinction of the species.

**Required Determinations—Amended**

In our December 14, 2006, proposed rule (71 FR 75189), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until information concerning potential economic impacts of the revised designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132 (Federalism); E.O. 12988; the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630 (Takings), and the Unfunded Mandates Reform Act.

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for *Chorizanthe pungens* var. *pungens*, future costs associated with conservation efforts for *C. p.* var. *pungens* are estimated to be approximately $17 million (undiscounted) over a 20-year period as a result of the proposed designation of revised critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be approximately $13 million ($0.85 million annualized) at a 3 percent discount rate or approximately $9.6 million ($0.85 million annualized) at a 7 percent discount rate. As described in the draft economic analysis, four entities are anticipated to experience the highest estimated costs. These include California Department of Parks and Recreation (CDPR), with potential economic impacts estimated at approximately $10.5 million (undiscounted) over the next 20 years; the Department of the Army (on former Fort Ord), with potential economic impacts estimated at approximately $3.5 million (undiscounted) over the next 20 years; the University of California (on former Fort Ord), with potential economic impacts estimated at approximately $1.5 million (undiscounted) over the next 20 years; and the Bureau of Land Management (BLM), with potential economic impacts estimated at approximately $0.83 million (undiscounted) over the next 20 years. Therefore, based on our draft economic analysis, we have determined that the proposed designation of revised critical habitat for *C. p.* var. *pungens* will not result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat provided the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments received, this determination is subject to revision as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If the proposed revised critical habitat designation is made final, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of the proposed revised critical habitat designation, we evaluate the potential economic effects on small business entities resulting from conservation actions related to the listing of *Chorizanthe pungens* var. *pungens* and proposed designation of revised critical habitat. We determined from our draft analysis that the small business entities that could potentially be affected include one city government (City of Pacific Grove), and one private farm. However, costs were not associated with the City of Pacific Grove or the private farm because of the small likelihood that these landowners would undertake actions to conserve the species in the future. It is unknown at this time whether a third entity, Fort Ord Reuse Authority (FORA), would be classified as a small entity because the local agencies that will receive land from FORA are unknown because the Habitat

Conservation Plan (HCP) that will provide the framework for distribution and management of former Fort Ord lands has not been completed. Therefore, for the purpose of the draft economic analysis, FORA was not classified as a small entity. From this analysis, we certify that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

*Executive Order 13211—Energy Supply, Distribution, and Use*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. One critical habitat unit (Prunedale, Unit 7) contains 17 ac (7 ha) of land held in a conservation easement owned by Pacific Gas and Electric Company. Pacific Gas and Electric Company maintains power lines that cross this unit; however, because the company does not plan to develop this land any further, the designation of revised critical habitat is not expected to have an adverse effect on energy production. Although the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens* is considered a significant regulatory action under E.O. 12866 because it may raise novel legal and policy issues, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service makes the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens*, there is expected to be no impact on small governments or small entities. There is no record of consultations between the Service and any of these governments since *C. p.* var. *pungens* was listed as threatened on February 4, 1994 (59 FR 5499). It is likely that small governments involved with developments and infrastructure projects would be interested parties or involved with projects involving section 7 consultations for *C. p.* var. *pungens* within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of revised critical habitat for the *C. p.* var. *pungens* would significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

*Executive Order 12630—Takings*

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing revised critical habitat for *Chorizanthe pungens* var. *pungens*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this proposed designation of revised critical habitat for *C. p.* var. *pungens* does not pose significant takings implications.

**Authors**

The primary authors of this notice are the staff of the Ventura Fish and Wildlife Office.

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 5, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E7–20241 Filed 10–15–07; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 070809451–7452–01]**

**RIN 0648–AV79**

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 42

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The current regulations governing the Northeast (NE) multispecies fishery contain a number of inadvertent errors, omissions, and ambiguities, including some that may appear to be inconsistent with the measures adopted by the New England Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) in recent actions taken under the NE Multispecies Fisheries Management Plan (FMP), including Amendment 5, Framework Adjustment (FW) 38, Amendment 13, FW 40–A, FW 41, and FW 42. The intent of this action is to correct these errors and omissions and to clarify specific regulations to ensure consistency with, and accurately reflect the intent of, previous actions under this FMP.

**DATES:** Written comments must be received on or before October 31, 2007.

**ADDRESSES:** You may submit comments, identified by 0648–AV79, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.*
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule to Correct/Modify NE Multispecies Regulations.''
- Fax: (978) 281–9135.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review (RIR) prepared for this action are available upon request from the Regional Administrator at the above address. Copies of the environmental assessments (EAs) prepared for FW 42, FW 41, FW 40–A, and FW 38; and the supplemental environmental impact statements (SEIS) prepared for Amendments 5 and 13 may be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Rostker, Office of Management and Budget (OMB), by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, Fishery Policy Analyst, phone (978) 281–9141, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

## Background

The most recent management action in the NE multispecies fishery, FW 42, was implemented by a final rule that published in the **Federal Register** on October 23, 2006 (71 FR 62156) and became effective on November 22, 2006. FW 42 superseded measures implemented by an emergency final rule that published on April 13, 2006 (71 FR 19348) that was implemented because of a delay in the development of FW 42. However, upon further review of regulations implemented by the FW 42 final rule, NMFS found that the current regulations contained several inadvertent errors, omissions, and ambiguities that appear to be inconsistent with the measures adopted by the Council and approved by the Secretary. Some of the errors were due to failure of the current regulations to adapt or reinstate measures that were included or modified by the April 13, 2006, emergency final rule. Other errors were the result of incorrect references or a failure to adequately address administrative issues associated with specific measures. Further review of the current regulations revealed that there were other errors related to previous management actions under the FMP, including Amendments 5 and 13, FW 40–A, FW 41, and FW 38, as specified below. Pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), this action proposes to correct these errors, revise specific measures to facilitate administration of such measures, and clarify or modify the current regulations to maintain consistency with FW 42 and other previous actions. The following proposed corrections are listed in the order in which they appear in the regulations.

## Proposed Measures

*1. Definitions for Lessor, Lessee, Transferor, and Tranferee*

The April 27, 2004, final rule implementing measures approved under Amendment 13 (69 FR 22906) created two programs designed to allow vessels to obtain additional NE multispecies days-at-sea (DAS) in order to offset the economic impacts of effort reductions under that action. These programs, the DAS Leasing and DAS Transfer Programs, include provisions that specifically apply to either the vessel giving or receiving DAS. While the regulations refer to these vessels as the ''lessor/transferor'' and ''lessee/transferee'' for both of these programs, respectively, the Amendment 13 final rule never explicitly defined these terms. As a result, this rule would define each of these terms at 50 CFR 648.2 to clarify the applicability of specific provisions for each of these programs.

*2. Vessel Monitoring System (VMS) Notification Requirements*

Currently, vessels issued limited access permits in several fisheries are either required to use VMS, or may elect to use VMS in lieu of using the DAS call-in system. The final rule implementing FW 42 required all NE multispecies vessels fishing under a NE multispecies DAS to use VMS and indicated that such vessels would be sent letters detailing the procedures pertaining to VMS purchase, installation, and use. However, the current regulations do not specifically address what procedures other vessels using VMS should follow.

Because the NMFS VMS and DAS systems use the VMS activity code declared by the vessel operator to enforce existing area-based regulations and accurately charge DAS based upon where the vessel fishes, what gear the vessel uses, the DAS type used, and the management program in which the vessel is participating, it is critical that the VMS activity code declared on each trip accurately reflects the vessel's intended operations. If the VMS activity code is incorrect, for example, DAS could be inaccurately charged and a vessel may be subject to enforcement action, increasing the burden on both vessel operators and NMFS for inaccurate VMS declarations. Although the current regulations do not specifically detail how and when a vessel should declare its intended fishing activity via VMS for all fisheries,

NMFS believes it is essential that all vessels using VMS must declare their intended activity through VMS prior to each trip to ensure that the VMS activity code declared accurately represents the vessel's intended activity for that trip. NMFS has recently sent letters to all affected permit holders instructing vessel operators on the proper use of VMS, including a letter on March 7, 2007, that required vessel operators to declare a VMS activity code prior to each trip.

The FW 42 final rule modified the regulations at § 648.10(b)(2) to state that NMFS shall send letters to all limited access NE multispecies DAS permit holders providing detailed information on the procedures pertaining to VMS usage. Because the current regulations do not specifically describe the procedures pertaining to VMS usage in other fisheries, this action would modify the VMS notification requirements at § 648.10(b)(2) to specify that NMFS would send letters specifying the procedures pertaining to VMS purchase, installation, and use to all affected permit holders. Thus, this action would clarify that vessels required, or electing to use VMS are subject to the VMS usage requirements outlined in any previous and future permit holder letters. In addition, this action would specify at § 648.10(b)(5) that vessels using VMS must declare the vessel's intended fishing activity via VMS prior to leaving port before each fishing trip.

*3. Gulf of Maine (GOM) Grate Raised Footrope Trawl Exempted Whiting Fishery Prohibitions*

The GOM Grate Raised Footrope Trawl Exempted Whiting Fishery was implemented through a July 9, 2003, final rule (68 FR 40808). However, this final rule did not update the prohibitions at § 648.14(a)(35) and (43) to include this new exempted fishery. The prohibition at § 648.14(a)(35) prohibits the use of small mesh outside of listed exempted fisheries, while the prohibition at § 648.14(a)(43) indicates that it is unlawful for anyone to violate the provisions of listed exempted fisheries. This action would add a reference to the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery at § 648.80(a)(16) to these prohibitions.

*4. In-season Action Prohibition*

Starting with the implementation of Amendment 13 in 2004, the FMP has developed several Special Management Programs that provide the Regional Administrator with the authority to implement in-season adjustments to management measures, including revising trip limits, access to specific areas, and gear requirements. In-season actions are implemented through a temporary rule, with requirements outlined in letters sent to affected permit holders. Despite the authority to implement such in-season actions, there is no specific prohibition regarding the provisions of an in-season action. Therefore, this action would implement a provision at § 648.14(a)(78) prohibiting vessels from violating the requirements of an in-season action.

*5. Georges Bank (GB) Seasonal Closure Area Applicability*

The GB Seasonal Closure Area was first implemented by the final rule implementing measures approved under FW 33 to the FMP (April 24, 2000; 65 FR 21658). This closure applies to any vessel fishing with gear capable of catching groundfish and is effective from May 1 through May 31 of each fishing year. On November 19, 2004, the final rule implementing FW 40–A (69 FR 67780) established the Eastern U.S./Canada Haddock Special Access Program (SAP). This SAP allows vessels to target haddock using Category B DAS from May 1 through December 31 of each fishing year. The SAP area includes portions of the GB Seasonal Closure Area during the period of the closure. When the Council developed this SAP, it intended to exempt these SAP participants from the GB Seasonal Closure Area. However, the regulations implementing FW 40–A did not exempt such participating vessels from this closure. As a result, a final rule corrected this oversight and exempted vessels participating in the Eastern U.S./Canada Area Haddock SAP from the GB Seasonal Closure Area (December 27, 2005; 70 FR 76422). Both the April 13, 2006, emergency rule and the FW 42 final rule adjusted the start date of the Eastern U.S./Canada Haddock SAP from May 1 to August 1 of each fishing year. As a result, an exemption from the GB Seasonal Closure Area is no longer necessary for vessels participating in that SAP. Therefore, this action would remove the exemption at § 648.81(g)(2)(iv).

*6. DAS Leasing Program Application Requirements*

The final rule implementing Amendment 13 established the DAS Leasing Program. This program allows vessels to temporarily exchange Category A DAS on a yearly basis, provided participating vessels submit an application to lease DAS and the Regional Administrator approves the lease request. The FW 42 final rule revised the introductory text of the DAS Leasing Program regulations at § 648.82(k)(3). However, through an oversight in the regulatory text for that rule, the regulations at § 648.82(k)(3)(i) through (iii) were inadvertently removed. These regulations include the DAS Leasing Program application requirements and the authority of the Regional Administrator to approve or disapprove DAS leasing applications. These provisions are necessary to effectively administer the DAS Leasing Program. Therefore, this action would reinsert the provisions at § 648.82(k)(3)(i) through (iii) that were inadvertently removed.

*7. VMS Positional Polling Rates for U.S./Canada Management Area*

For vessels required to use VMS, the current regulations specify the minimum VMS positional polling rate. Vessels are responsible for paying for such VMS positional polls. When the Council adopted measures to include in Amendment 13, the Council did not specify a particular VMS positional polling rate that vessels would be responsible for paying for while fishing in the U.S./Canada Management Area. However, the Amendment 13 final rule indicated that a vessel participating in the U.S./Canada Management Area would be subject to a minimum VMS position polling rate of two polls per hour at the vessel's expense. NMFS, under the authority provided in section 305(d) of the Magnuson-Stevens Act, included this increased polling rate with the intent to facilitate and enhance the enforcement of area-specific management provisions. While NMFS can request a vendor to temporarily increase the VMS positional polling rate on individual vessels in any fishery at the Agency's expense to facilitate enforcement operations, to date, NMFS has not imposed the higher VMS positional polling rate on individual NE multispecies trips into the U.S./Canada Management Area, which would be at a participating vessel's expense, due to technical limitations.

Since implementing this requirement for vessels to pay for an increased polling frequency, NMFS has determined that such a measure should originate with the Council, similar to the way the Council adopted the requirement for vessels to pay for a polling rate of two VMS positional polls per hour for vessels participating in the Atlantic sea scallop fishery. The VMS positional polling rate for which all other vessels using VMS are required to pay for is one positional poll per hour. Because the Council did not specifically recommend that NE multispecies

vessels must pay for a higher VMS polling rate while fishing in the U.S./Canada Management Area, NMFS has decided to remove the increased VMS positional polling rate applicable to NE multispecies vessels. Therefore, this action would remove references to an increased VMS positional polling rate for vessels participating in the U.S./Canada Management Area from the regulations at §§ 648.9(c)(1)(ii), 648.10(b)(2)(iii), and 648.85(a)(3)(i).

*8. Haddock Total Allowable Catch (TAC) in the Closed Area (CA) I Hook Gear Haddock SAP*

The CA I Hook Gear Haddock SAP was first implemented by the FW 40–A final rule, but was later modified by the rule implementing measures approved under FW 41 to the FMP (September 14, 2005; 70 FR 54302). The FW 41 final rule split the SAP into two seasons (one season for vessels participating in an approved Sector and another season for non-Sector vessels), with the haddock TAC distributed accordingly. The FW 42 final rule further modified the manner in which the haddock TAC for this SAP is calculated, but did not revise the season or the distribution of the haddock TAC. The regulations implemented by the FW 42 final rule included revisions to the manner in which the haddock TAC is calculated, but inadvertently omitted the provisions that distributed the haddock TAC among the two seasons, including the authority of the Regional Administrator to adjust the quota to each season to account for under- or over-harvest of the haddock TAC during the first season of the SAP. Accordingly, the current regulations do not accurately reflect the provisions adopted by the Council and implemented under the FW 41 final rule. These provisions are necessary to administer this SAP effectively. Therefore, this action would revise the regulations at § 648.85(b)(7)(iv)(F) to reinsert the FW 41 provisions that were inadvertently removed.

*9. White Hake Trip Limits*

Early in the development of FW 42, the Council considered adopting a 500–lb (226.8–kg) per DAS, up to 5,000–lb (2,268–kg) per trip, limit for white hake. In order to implement the trip limits as soon as possible while FW 42 was still being developed, NMFS implemented an emergency rule establishing these trip limits. Subsequently, the Council adopted a white hake trip limit of 1,000 lb (453.6 kg) per DAS, up to 10,000 lb (4,536 kg) per trip in FW 42. The emergency rule was modified on April 28, 2006 (71 FR 25094) to reflect the white hake trip limit adopted by the Council in FW 42. However, both the FW 42 proposed and final rules inadvertently included the lower white hake trip limit included in the original emergency final rule. Therefore, this action would correct the white hake trip limit found at § 648.86(e) to accurately reflect the white hake trip limit adopted by the Council in FW 42.

*10. Approval of Sector Applications*

The procedure to review and approve sector allocations was first established through the Amendment 13 final rule. Although the SEIS prepared to support Amendment 13 did not specifically direct NMFS to publish a proposed rule when reviewing sector applications and operations plans, the Amendment 13 final rule included language that required NMFS to seek public comment on proposed sector operations plans through the publication of a proposed rule in the **Federal Register**. The Administrative Procedure Act (APA) allows agencies to waive the requirement to publish a proposed rule and to provide for public comment in limited circumstances. However, because the current regulations require NMFS to develop a proposed rule for each sector, NMFS must publish a proposed rule for sectors and does not have the ability to take advantage of the provision in the APA that allows the Assistant Administrator to waive proposed rulemaking should circumstances allow. Based upon the existing procedures and associated time lines, the requirement to develop a proposed rule may be too inflexible and can unnecessarily delay the start of proposed sector operations beyond the start of the fishing year on May 1. This can create unnecessary adverse economic and social impacts for sector participants, especially if the sector operations plans do not change between fishing years. Therefore, this action would revise the existing sector approval regulations at § 648.87(c)(1) and (2) by removing the requirement to develop a proposed rule, but indicating that sectors would be approved consistent with applicable law.

*11. Recreational Fish Size Restrictions*

Although minimum fish size restrictions have been implemented since the initial development of the FMP, the final rule implementing measures approved under Amendment 5 (March 1, 1994; 59 FR 9872) specified that the minimum fish sizes also apply to any fish or part of a fish, including fillets. The Amendment 5 SEIS indicates that fish or fish parts must have the skin on for the purposes of identification to facilitate enforcement of the minimum size provisions. The SEIS only provides one exception to this requirement, allowing commercial vessels to retain up to 25 lb (11.3 kg) of fillets of legal-sized fish for personal consumption. While not explicitly indicated, the intent of the skin-on provision applies to groundfish caught by any vessel—commercial, charter/party, or private recreational vessel.

The regulations implemented by the Amendment 5 final rule clearly outline the minimum fish size provisions for commercial vessels at § 648.83, including the skin-on provision in paragraph (a)(2) of that section. However, the recreational minimum fish size requirements at § 648.89 do not specifically include the skin-on provision. Because the charter/party regulations at § 648.89 do not specifically indicate that the skin-on provisions applies to such vessels, this action would add the skin-on provision outlined at § 648.83(a)(2) at § 648.89(b)(4).

*12. Additional Corrections*

In addition to the changes specified above, the following changes to the regulations as amended by the final rule implementing FW 42 are proposed to correct inaccurate references and to further clarify the intent of FW 42 and previous actions. The changes listed below are in the order in which they appear in the regulations.

In § 648.4(c)(2)(iii)(A), the reference to the annual designation as either a Day or Trip gillnet vessel at ''§ 648.82(k)'' would be corrected to read ''§ 648.82(j).''

In § 648.14, the reference to ''§ 648.81(d)'' in paragraph (a)(38) would be corrected to reference the transiting provision at § 648.81(i); the reference to ''§ 648.81(b)(2)(i)'' in paragraph (a)(39) would be corrected to reference the transiting provision at § 648.81(i); the reference to ''§ 648.51(a)(2)(ii) and (e)(2)'' in paragraph (a)(53) would be corrected to reference the gear stowage provisions at § 648.23(b); the reference to ''§ 648.85(b)(6)'' in paragraph (a)(153) would be corrected to read ''§ 648.85(b)(4);'' the reference to ''§ 648.86(g)(1)(i) or (g)(2)(i)'' in paragraph (b)(3) would be revised to read ''§ 648.86(g)(1),'' as § 648.86(g)(1)(i) and (g)(2) expired when the April 13, 2006, emergency rule (71 FR 19348) was superceded by the FW 42 final rule; the reference to ''§ 648.86(g)(1)(i) or (g)(2)(i)'' and ''§ 648.81(g)(1)(ii) and (g)(2)(ii)'' in paragraph (b)(4) would be corrected to read ''§ 648.86(g)(1),'' as § 648.86(g)(1)(i) and (g)(2) expired when the April 13, 2006, emergency rule was superceded by the FW 42 final rule; the

reference to ''§ 648.86(b)(1)(i)'' in paragraph (c)(24) would be corrected to read ''§ 648.86(b)(1);'' and the reference to ''§ 648.86(b)(2)(ii) or (iii)'' in paragraph (c)(26) would be corrected to read ''§ 648.86(b)(2).''

In § 648.80(b)(2)(vi), the reference to ''(a)(11)(i)(A) and (B)'' in the introductory text would be corrected to read ''(b)(11)(i)(A) and (B).''

In § 648.82(e)(1), the reference to ''§ 648.10(c)(5)'' would be corrected to read ''§ 648.10.''

In § 648.85, the reference to ''§ 648.94(b)(7)'' in paragraph (b)(6)(iv)(D) would be revised to read ''§ 648.94(b)(3),'' as § 648.94(b)(7) expired when the April 13, 2006, emergency rule was superceded by the FW 42 final rule; and the references to ''§ 648.85(b)(7)(iv)(G)'' in paragraph (b)(7)(iii), (b)(7)(v)(D), and (b)(7)(vi)(D) would be corrected to read ''§ 648.85(b)(7)(iv)(F),'' as § 648.85(b)(7)(iv)(G) expired when the April 13, 2006, emergency rule was superceded by the FW 42 final rule. In addition, reference to specific stock areas at § 648.85(b)(6)(v) would be added to § 648.85(b)(6)(iv)(D) to clarify that the landing limits specified in this paragraph apply to particular stock areas. Further, reference to § 648.10 would be inserted at § 648.85(b)(7)(iv)(A) to clarify how DAS would be counted in the Closed Area I Hook Gear Haddock SAP. Finally, § 648.85(b)(7)(vi)(G) through (I) would be removed, as these paragraphs were included in the April 13, 2006, emergency rule and expired when that rule was superceded by the FW 42 final rule.

In § 648.86(i), the references to ''§ 648.85(a)(3)(iv)'' and ''§ 648.85(a)(6)(iv)(D)'' would be corrected to read ''§ 648.85.''

In § 648.92, paragraph (b)(2)(iii) would be deleted, as this repeats the regulations at § 648.92(b)(2)(ii) and is not necessary.

**Classification**

Pursuant to sections 304 (b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for fisheries, NOAA, has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The proposed allocation would correct/clarify the existing regulations to ensure that the current regulations accurately reflect measures adopted by the New England Fishery Management Council and approved by the Secretary of Commerce. This action would ensure that the economic impacts analyzed in previous actions would be realized, but would not impose any additional economic impacts on affected entities. The proposed action would not significantly reduce profit for affected vessels, as the proposed measures are either administrative in nature and would not affect vessel operations, or would have no economic impact beyond that previously analyzed. For example, FW 42 indicated that declarations of a vessel's intended activity via VMS prior to each trip would cost groundfish vessels approximately $0.50 per declaration, or about $15,000 per year. In addition, Amendment 13 indicated that the U.S./Canada Management Area gear requirements would cost participating vessels $7,500 for a modified flounder net, or $747 to comply with the haddock separator trawl requirement. This action would simply clarify or reinstate such requirements, respectively, but would not increase costs associated with these measures. Other measures corrected or clarified by this action would ensure that unnecessary costs, such as the costs for higher VMS positional polling rates, are eliminated or that vessels would be able to fully realize the economic benefits of special management programs by correctly distributing the available haddock resources in the Closed Area I Hook Gear Haddock SAP.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a number of collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB as follows:

1. VMS purchase and installation, OMB # 0648–0202, (1 hr/response);
2. VMS proof of installation, OMB # 0648–0202, (1 hr/response);
3. Automated VMS polling of vessel position, OMB # 0648–0202, (5 sec/response);
4. Area and DAS declarations via VMS, OMB # 0648–0549 (5 min/response);
5. Standardized catch reporting requirements, OMB # 0648–0212 (15 min/response);
6. Sector manager daily reports for CA I Hook Gear Haddock SAP, OMB # 0648–0212, (2 hr/response);
7. DAS Leasing Program application, OMB # 0648–0202, (5 min/response);
8. Annual declaration to participate in the CA I Hook Gear Haddock SAP, OMB # 0648–0202, (2 min/response);
9. Sector allocation proposal, OMB # 0648–0202, (50 hr/response); and
10. Sector operations plan submission, OMB # 0648–0202, (50 hr/response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This action would not create new information collections or modify the response time associated with any of the information collection referenced above. Instead, this action would revise the regulations underlying these information collections to correct inadvertent errors, omissions, and ambiguities in the current regulations, as described in the preamble. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting.

Dated: October 11, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.2, definitions for ''lessee,'' ''lessor,'' ''transferee,'' and ''transferor'' are added, in alphabetical order, to read as follows:

**§ 648.2 Definitions.**

* * * * *

*Lessee* means a vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k).

*Lessor* means a vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS

Leasing Program specified at § 648.82(k).

* * * * *

Transferee means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at § 648.82(l).

Transferor means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at § 648.82(l).

* * * * *

3. In § 648.4, paragraph (c)(2)(iii)(A) is revised to read as follows:

**§ 648.4 Vessel permits.**

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

**§ 648.9 [Amended]**

4. In § 648.9, remove and reserve paragraph (c)(1)(ii).

5. In § 648.10, the introductory text of paragraph (b)(2), and paragraph (b)(2)(iii) are revised; and paragraph (b)(5) is added to read as follows:

**§ 648.10 DAS and VMS notification requirements.**

* * * * *

(b) * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all affected permit holders providing detailed information on the procedures pertaining to VMS purchase, installation, and use.

* * * * *

(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

* * * * *

(5) *VMS notification requirements for other fisheries.* Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (b)(2) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b)(1) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip. Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs. A vessel cannot change any aspect of its VMS activity code outside of port, except that NE multispecies vessels are authorized to change the category of DAS used (i.e., flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A). VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

* * * * *

6. In § 648.14, paragraphs (a)(35), (a)(38), (a)(39), (a)(43), (a)(53), (a)(153), (b)(3), (b)(4), (c)(24), and (c)(26) are revised and paragraph (a)(78) is added to read as follows:

**§ 648.14 Prohibitions.**

(a) * * *

(35) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4), except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (i).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

* * * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the

Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16) the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5); the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

* * * * *

(78) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

* * * * *

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(4), fail to comply with the restrictions and conditions under § 648.85(b)(4)(i) through (iv).

* * * * *

(b) * * *

(3) While fishing in the areas specified in § 648.86(g)(1), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1).

(c) * * *

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

* * * * *

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

* * * * *

7. In § 648.80, paragraph (b)(2)(vi) is revised to read as follows:

**§ 648.80 NE multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

* * * * *

(b) * * *

(2) * * *

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

**§ 648.81 [Amended]**

8. In § 648.81, remove paragraph (g)(2)(iv).

9. In § 648.82, paragraph (e)(1) is revised and paragraphs (k)(3)(i) through (iii) are added to read as follows:

**§ 648.82 Effort-control program for NE multispecies limited access vessels.**

* * * * *

(e) * * *

(1) DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10.

* * * * *

(k) * * *

(3) * * *

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by

the Regional Administrator is the final agency decision.

* * * * *

10. In § 648.85, paragraphs (b)(7)(vi)(G) through (I) are removed, and paragraphs (a)(3)(i), (b)(6)(iv)(D), (b)(7)(iii), (b)(7)(iv)(A) and (F), (b)(7)(v)(D), and (b)(7)(vi)(D) are revised to read as follows:

**§ 648.85 Special management programs.**

(a) * * *

(3) * * *

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

* * * * *

(7) * * *

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2005 fishing year, the only participation period in which eligible Sector vessels may fish in the CA I Hook Gear Haddock SAP is from October 1 through November 15. For the 2005 fishing year, the only participation period in which eligible non-Sector vessels may fish in the SAP is from November 16 through December 31. For the 2006 fishing year and beyond, these participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1 through November 15, and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(F) of this section is harvested prior to November 15.

(iv) * * *

(A) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

* * * * *

(F) *Haddock TAC—*(*1*) *Allocation and distribution.* The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: $Biomass_{YEAR\ X}$= (1,130 mt live weight) x (Projected WGB Haddock $Exploitable_{BiomassYEAR\ X}$/WGB Haddock Exploitable $Biomass_{2004}$). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The maximum amount of haddock that may be caught in this SAP during each fishing year is divided evenly between the two participation periods of October 1 - November 15 and November 16 - December 31, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with applicable law.

(*2*) *Adjustments to the haddock TAC.* The Regional Administrator may adjust the portion of the haddock TAC specified for the second participation period to account for under- or over-harvest of the portion of the haddock TAC (landings and discards) that was harvested during the first participation period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

* * * * *

(v) * * *

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

* * * * *

(vi) * * *

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24–hr intervals for each day fished, beginning at 0000 hr local time and ending at 2400 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required

under paragraph (b)(7)(iv)(F) of this section.

* * * * *

11. In § 648.86, paragraphs (e) and (i) are revised to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

* * * * *

(e) *White hake.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536 kg) per trip.

* * * * *

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit.* Vessels that have ended a trip as specified in § 648.10(b)(2)(iii) or (c)(3) that possess on board species regulated by a daily possession limit (i.e., pounds per DAS), as specified at § 648.85 or § 648.86, must offload these species prior to leaving port on a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested, but may retain on board winter flounder up to the maximum trip limit prior to leaving port and crossing the VMS demarcation line to begin a subsequent trip.

* * * * *

12. In § 648.87, paragraphs (b)(1)(ix), (b)(1)(xv) and (xvi), (b)(2)(x), and (c) are revised to read as follows:

**§ 648.87 Sector allocation.**

* * * * *

(b) * * *

(1) * * *

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant 15 CFR part 904.

* * * * *

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by the National Marine Fisheries Service pursuant to paragraph (c)(2) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(2) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

* * * * *

(2) * * *

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operations Plan specified in this paragraph (b)(2) and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved Operations Plan. Each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

(2) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE Multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(3) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at any time if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking consistent with applicable law.

* * * * *

13. In § 648.89, paragraph (b)(4) is added to read as follows:

**§ 648.89 Recreational and charter/party vessel restrictions.**

* * * * *

(b) * * *

(4) The minimum fish size applies to whole fish or to any part of a fish while possessed on board either a charter/party or a private recreational vessel. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

* * * * *

**§ 648.92 [Amended]**

14. In § 648.92, remove paragraph (b)(2)(iii).

[FR Doc. E7–20386 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–22–S**

# Notices

Federal Register
Vol. 72, No. 199
Tuesday, October 16, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

**AGENCY:** Research, Education, and Economics, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The meeting is open to the general public.

**DATES:** The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet October 29–31, 2007 at the Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20024.

**ADDRESSES:** The public may file written comments before or up to two weeks after the meeting with the contact person. You may submit comments by any of the following methods: E-mail: *JADunn@csrees.usda.gov*; Fax: (202) 720–6199; Mail/Hand-Delivery or Courier: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344-A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

**FOR FURTHER INFORMATION CONTACT:** Joseph Dunn, Executive Director or Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684.

**SUPPLEMENTARY INFORMATION:** On Monday, October 29, 2007, at 9 a.m. an Orientation Session for new members and interested incumbent members will be held. The full Advisory Board Meeting will convene at 12:15 p.m. with introductory remarks provided by the Acting Chair of the Advisory Board. There will be brief introductions by new Board members, incumbents, and guests followed by general Advisory Board Business. There will be remarks from a variety of distinguished leaders and experts in the field of agriculture, as well as officials and/or designated experts from the four agencies of USDA's Research, Education, and Economics Mission area. Speakers will provide recommendations regarding ways the USDA can enhance its research, extension, education, and economic programs to protect our Nation's food, fiber, fuel and agricultural system. The Honorable (Acting) Secretary of Agriculture, Chuck Conner, will attend the meeting and provide brief remarks. The meeting will adjourn for the day at 5 p.m. Following adjournment, an evening program will be held from 6 p.m. to 8 p.m. with guest speaker Dr. Robert Brackett, Director of the U.S. Food and Drug Administration's Center for Food Safety & Applied Nutrition, who will present highlights concerning Food Safety. On Tuesday, October 30, 2007, the meeting will reconvene at 7:30 a.m. with introductory remarks from Dr. Gale Buchanan, Under Secretary of the Research, Education and Economics Mission Area. Various presentations and discussions will take place throughout the day on the two Focus Topics, ''Organic Agriculture'' and ''Rural Economic and Community Development and Priorities for Cooperative Extension''. The meeting will adjourn for the day by 5:15 p.m. Following the adjournment, there will be an evening meeting with guest speaker, Dr. Bo Beaulieu, Director, Southern Rural Development Center, who will provide highlights on Rural Development. On Wednesday, October 31, 2007, the Board Meeting will reconvene at 8:30 a.m. with a final session to discuss Strategic Plans for the Board. The Advisory Board Meeting will adjourn by 9:30 a.m. Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (by close of business Wednesday, November 14, 2007). All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Extension, Education, and Economics Advisory Board Office.

Done at Washington, DC this 10th day of October, 2007.

**Gale Buchanan,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. E7–20324 Filed 10–15–07; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. AMS–LS–07–0113; LS–05–09]**

### United States Standards for Livestock and Meat Marketing Claims, Grass (Forage) Fed Claim for Ruminant Livestock and the Meat Products Derived From Such Livestock

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) is establishing a voluntary standard for a grass (forage) fed livestock marketing claim. This standard incorporates revisions made as a result of comments received from an earlier proposed standard. A number of livestock producers make claims associated with production practices in order to distinguish their products in the marketplace. With the establishment of this voluntary standard, livestock producers may request that a grass (forage) fed claim be verified by the Department of Agriculture (USDA). Verification of this claim will be accomplished through an audit of the production process in accordance with procedures that are contained in Part 62 of Title 7 of the Code of Federal Regulations (7 CFR part 62), and the meat sold from these approved programs can carry a claim verified by USDA.

**DATES:** *Effective Date:* November 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Martin E. O'Connor, Chief, Standards, Analysis, and Technology Branch, Livestock and Seed Program, AMS, USDA, Room 2607–S, 1400

Independence Avenue, SW., Washington, DC 20250–0254, facsimile (202) 720–1112, telephone (202) 720–4486, or e-mail *Martin.OConnor@usda.gov*. The U.S. Standards for Livestock and Meat Marketing Claims, Grass (Forage) Fed Claim for Ruminant Livestock and the Meat Products Derived from Such Livestock, is available through the above physical address or by accessing the Web site at *http://www.ams.usda.gov/lsg/stand/claim.htm*.

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622), directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' USDA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural products. One way of achieving this objective is through the development and maintenance of voluntary standards by AMS.

AMS is establishing this voluntary U.S. Standard for Livestock and Meat Marketing Claims, Grass (Forage) Fed Claim for Ruminant Livestock and the Meat Products Derived from Such Livestock, in accordance with procedures that are contained in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements for the services associated with the grass (forage) fed marketing claim is approved under Office of Management and Budget (OMB) Control No. 0581–0124, which expires August 31, 2008.

**Background**

Individuals and companies often highlight production and marketing practices in advertisements and promotions to distinguish their products in the marketplace. Since the late 1970's, livestock and meat producers (individuals and companies) have requested the voluntary services of AMS to verify or certify specific practices to increase the value of their products. The Livestock and Seed (LS) Program of AMS has provided certification, through direct product examination, for a number of production claims related to livestock and carcass characteristics. The validity of such claims was enhanced since the product was labeled as ''USDA Certified.'' The LS Program also offers verification services through Quality System Verification Programs (QSVP; *http://www.ams.usda.gov/lsg/arc/audit.htm*) to substantiate claims that cannot be determined by direct examination of livestock, their carcasses, component parts, or the finished product. The QSVP provides suppliers of agricultural products or services the opportunity to distinguish specific activities involved in the production and processing of their agricultural products and to assure customers of their ability to provide consistent quality products or services. This is accomplished by documenting the quality management program and having the manufacturing or service delivery processes verified through independent, third-party audits. One specific QSVP is the USDA Process Verified Program which allows suppliers to make marketing claims—such as feeding practices or other raising and processing claims—and label and market their products as ''USDA Process Verified.''

As multiple marketers of specialized claims began to seek USDA certification or verification for the same or similar production practices, AMS determined it would be beneficial to establish standards for common production and marketing claims and these standards will collectively be a part of the voluntary U.S. Standards for Livestock and Meat Marketing Claims that may be used in conjunction with a certified or verified program recognized by AMS. The livestock and meat marketing claim standards will be instrumental in facilitating communication, establishing a common trade language, and enhancing understanding among producers, processors, and consumers. Past experience indicates that standards sort a highly diverse population into more homogeneous groups, and when standards are uniformly applied, they provide a valuable marketing tool. AMS develops standards for marketing and production claims based on experience with USDA Certified Programs and USDA QSVP, research into standard practices and procedures, and requests from the livestock and meat industries. One such production practice is the raising of livestock on grasslands or forage products. Accordingly, AMS is establishing the voluntary grass (forage) fed marketing claim standard. AMS obtained input from a number of individual experts in government, industry, and academia while drafting this standard and the corresponding thresholds for compliance.

Product labels that include the grass (forage) fed marketing claim must be submitted to USDA's Food Safety and Inspection Service (FSIS), Labeling Program and Delivery Division (LPDD), for evaluation prior to use. FSIS, LPDD, under the authority of the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601, 607) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451, 457), regulates domestic and imported meat, poultry, and egg product labeling, standards, and ingredients. AMS has worked closely with FSIS, LPDD to develop the voluntary grass (forage) fed marketing claim standard. The standard for a grass (forage) fed marketing claim will be part of the voluntary U.S. Standards for Livestock and Meat Marketing Claims which may be used in conjunction with a USDA QSVP. Grass (forage) fed marketing claims may be verified, as provided in 7 CFR Part 62, by a feeding protocol that confirms a grass (forage)-based diet. However, since this is a voluntary marketing claim, FSIS will not establish a new provision to limit the use of the term grass (forage) fed to labels in which participants have a USDA QSVP. Any specific labeling issues or questions not related to AMS' services should be directed to the FSIS, LPDD.

**Comments and Responses on the Proposed Marketing Claim Standard for the Grass (Forage) Fed Claim**

AMS originally proposed 13 U.S. Standards for Livestock and Meat Marketing Claims, as a notice and request for comments, in the December 30, 2002, **Federal Register** Notice (67 FR 79552), including the grass (forage) fed claim. AMS then revised the grass (forage) fed claim and re-proposed the claim in the May 12, 2006, **Federal Register** Notice (71 FR 27662). This final notice only covers the grass (forage) fed claim. Other claims that appeared in the December 30, 2002, **Federal Register** Notice (67 FR 79552) will be addressed at a later time.

In the December 30, 2002, **Federal Register** Notice (67 FR 79552), the grass (forage) fed claim standard proposed that grass, green or range pasture, or forage shall be 80 percent or more of the primary energy source throughout the animal's life cycle. As a result of the public comments received, AMS determined significant modification to the proposed grass (forage) fed standard was needed. AMS re-proposed the grass (forage) fed claim standard in the May 12, 2006, **Federal Register** Notice (71 FR 27662). It proposed that grass (annual and perennial), forbs (legumes, *Brassica*), browse, forage, or stockpiled forages, and post-harvest crop residue

without separated grain shall be at least 99 percent of the energy source for the lifetime of the ruminant specie, with the exception of milk consumed prior to weaning.

By the close of the comment period for the May 12, 2006, **Federal Register** Notice (71 FR 27662), AMS received 19,811 comments concerning the grass (forage) fed claim from consumers, academia, trade and professional associations, non-profit organizations, national organic associations, consumer advocacy associations, retail and meat product companies, and livestock producers. Summaries of issues raised by commenters and AMS' responses follow.

**Grass (Forage) Percentage**

*Comments:* An overwhelming majority of the comments received expressed support that AMS chose to develop and propose production standards for grass fed animals. Further, the majority of comments supported that the animal's diet must be 99 percent or higher grass or forage-based. AMS also received a small number of comments suggesting a percentage other than the proposed 99 percent. A few commenters suggested the standard be 100 percent grass or forage-based. One commenter in particular commented favorably on the increase from 80 percent to 99 percent but stated that a 100 percent would be easier to verify. There were also commenters who stated that the 99 percent grass or forage-based diet was too strict due to the diverse climate and rangeland throughout the United States. One commenter stated that 99 percent of the diet coming from grass or forage is too high to have a balanced ration that provides good weight gains and also reduces nitrogen losses to the environment. One commenter stated that 75 percent of beef producers in the United States work with environments with periods of zero plant growth, and only the highest quality stored forages will result in weight gains approaching 1.0 kg/day. These commenters recommended various levels from 90 to 97.5 percent grass or forage-based diet to address these concerns. One comment suggested that the grass (forage) fed claim require that grass (forage) be at least 99 percent of the energy source for the lifetime of the animal with the exception of documented emergency feeding. Another commenter stated that the 1 percent allowed for non-forage feed should be specified for inadvertent or emergency cases only, but not part of the regular ration. Beyond setting a percentage level, one commenter also asked AMS to provide scientific justification for the level being at 99 percent.

Commenters were not only concerned about the percentage level but also requested further clarification of what the percentage refers to. One commenter supported the figure of 99 percent as the grass (forage) fed standard but requested that the wording be changed from ''99% of the energy source'' to ''99% of the dry matter intake.'' This commenter's rationale was that the percentage of the energy source as related to animal food intake is not a commonly calculated measure and using it will cause confusion and various unintended interpretations on how it is to be measured. Another commenter made a similar request that the language require feeding of 100 percent forage and not 99 percent of the energy from forage. Two other commenters also had similar comments that the claim as stated is confusing, that the statement ''at least 99 percent of the energy source'' does not correspond to ''a grass or forage based diet that is 99 percent or higher'' and that the first statement could be taken as any amount of protein (or other nutrient) source could also be fed. Another commenter suggested that the use of forage as an energy source should be changed to ''energy/feed source'' to avoid the supplementation of non-forage-based nitrogen, such as urea treated hay.

*Agency Responses:* After evaluating the extensive comments received regarding the appropriate diet percentage, AMS determined that in order to make a grass (forage) fed marketing claim, a diet of grass (forage) should be maximized. AMS believes that the 99 percent grass or forage-based diet proposed in the May 12, 2006, **Federal Register** Notice (71 FR 27662) was appropriate. However, AMS concurs it is easier to verify a 100 percent grass (forage)-based diet. AMS also concurs that as proposed, various interpretations on what the percentage refers to and how it will be measured (calculated) might occur. The language in the standard regarding the use of grass (forage) as an ''energy source'' should be changed and clarified to represent that the standard is based solely on the consumption of a grass (forage)-based diet. Removing the ''energy source'' terminology will further clarify that supplemental energy and protein sources are not permitted and will remove any confusion about how to measure (calculate) percent energy source. Again, AMS believes that due to the nature of grass (forage) fed production systems, it will be more appropriate to verify a maximized (100 percent) grass (forage)-based diet. Therefore, AMS will not adopt any of the other suggested percentage levels and will remove any reference to a percentage in the standard. Accordingly, the grass (forage) fed marketing claim will only apply to ruminant animals whose diet throughout their lifespan is derived solely from grass (forage), with the exception of milk consumed prior to weaning. AMS realizes that incidental supplementation may occur due to inadvertent exposure to non-forage feedstuffs or to ensure the animal's well being at all times during adverse environmental or physical conditions. If incidental supplementation occurs as described above, the producer must fully document (e.g., receipts, ingredients, and tear tags) the incidental supplementation that occurs including how much, how often, and what was supplemented. The producer must maintain sufficient records of the animal's diet for the lifespan of the animal to demonstrate compliance with the requirement that, throughout its lifespan, the ruminant animal's diet is derived solely from grass and forage, with the exceptions previously discussed.

Finally, with regard to the commenter requesting scientific justification for the 99 percent grass (forage)-based diet, AMS notes that this is a marketing claim centered on a production method where the animal's diet is derived from grass and not a computed scientific figure.

**Clarification of Language and Definition Relative to the Exclusion of Grains**

*Comments:* The majority of the comments received requested that the standard be clarified, and stated that the language in the proposed standard was ambiguous which could allow meat from grain fed animals to be labeled as grass (forage) fed. Specifically, many of the commenters asked for the meaning of ''immature grain'' to be clarified. AMS received numerous comments with specific suggestions for the language in the background section and definition of the grass (forage) fed standard to ensure grain would be prohibited. Commenters suggested that the standard should prohibit the use of any mature corn or other traditional feed grains in feedstock used by producers seeking to market products under a grass (forage) fed label. Numerous commenters requested that crops normally harvested for grain (such as corn and small grains) must be harvested or grazed when in the vegetative state (pre-grain formation) in order to be considered eligible feed under this standard. Several commenters suggested that ''hay,

haylage, baleage, silage, and ensilage may be fed, provided no grain species have reached the milk stage or legume grain reached 10 percent pod fill.''

A few other comments were also received regarding the language in the standard. One commenter recommended that AMS reconsider the definition of eligible feed provided in the 2002 Notice (i.e., grass, green or range pasture, or forage) and include language regarding the specific conditions where harvested grasses can be used. They stated that if AMS changes the definition of ''grass,'' then AMS will need to also look at the impact the change makes on meeting the nutritional needs of the animal if the requirement is to still be 99 percent of the energy needs. One commenter stated that it may be better to indicate that legumes and *Brassica* are only examples of forbs, not the complete list of acceptable forbs. One commenter requested that the word ''mother's'' be inserted before the phrase ''milk consumed prior to feeding.'' Another commenter brought up the issue of calves raised on milk replacer until weaning. This commenter stated that in dairy-intensive regions of the United States it is possible for dairy bull and steer calves to be part of grass fed beef production systems and that it would be useful for the standard to clarify whether milk replacer is an acceptable feed source.

*Agency Responses:* AMS did not intend for the standard to permit meat from grain fed animals to be labeled as grass (forage) fed. AMS agrees further clarification and more specific language are needed to prevent the feeding of grain. AMS has incorporated several of the suggested clarifications received through the comments on this point and the definition of grass (forage) will be clarified so that crops normally harvested for grain may qualify for forage only if they are harvested or are grazed in the vegetative state (pre-grain). The details regarding the language clarifications are set forth in this standard. Regarding milk consumed by calves prior to weaning, AMS has determined that it is not necessary to insert the word ''mother's'' as one commenter suggested. Milk replacer fed prior to weaning is within the intent of the grass (forage) fed standard, as it is an acceptable alternative feed source to mother's milk. The remainder of the comments were considered, but not incorporated into the standard as AMS has determined the standard, with the revisions made, is clear, attainable, and appropriate.

**Stored and Harvested Forages and Other Supplements**

*Comments:* One issue that particularly divided commenters was allowing stored or harvested forages to be a part of the grass (forage) fed claim. One commenter stated it is important to exclude ''green chop'' forage, corn or sorghum grain, and soybeans. Another commenter encouraged AMS not to allow harvested forage, corn silage, or other grains that have been separated from their stalks to be part of the grass (forage) fed claim. Another commenter specifically did not think the feeding of fermented vegetative products like silage should be permitted in the grass (forage) fed designation as they have undergone significant chemical alteration. One commenter wanted animals raised 100 percent on live, green grass and that their diet should not include hay, almond hulls, or other vegetable matter.

Some commenters stated mechanically harvested forage without grain may be fed to animals while on grassland during periods of inclement weather or low forage quality. Several commenters supported the proposed standard to allow the feeding of harvested grass and forage to grass fed animals. They stated that in northern climates, feeding of harvested grass and forage during winter months is often necessary to sustain animals in a healthy condition as well as in drought conditions. Another commenter stated that stored forages should be allowed, because in most regions of the country, cattle cannot graze during the entire calendar year, and there will be year round demand for locally produced grass fed, fresh products. This commenter stated that their customers in the winter would rather purchase products produced from grass fed animals fed stored forage than conventional meat and dairy products, if they have the choice. This commenter also stated that the use of hay and hay crop silage will be needed to provide feed when snow cover prevents livestock from grazing live or dormant pasture. Another commenter mentioned that the best stored forage is grass that is mechanically harvested before grain is formed and properly cured and stored to maintain as much ''green'' as possible and that silage did not meet the ''green'' criteria.

AMS also received numerous comments suggesting various supplements that should or should not be considered eligible to be included in the grass (forage) fed diet. Again, the comments received regarding supplements differed in that some commenters stated that certain supplements should be allowed while others indicated that the supplements should not be allowed. Specific supplements mentioned to be excluded were processed or partially processed fruits, vegetables, rice, nuts or nut hulls, soybean meal and soy hulls, dried distillers grains, corn gluten feed, whole cottonseed, flax, beet pulp, citrus pulp, cottonseed meal, livestock minerals for proper immune function and general health, range cubes (75 percent ground alfalfa hay and 25 percent wheat and soybean meal, all organic certified), and wheat bran.

The commenters in support of feeding supplements stated that supplemental feeding of ruminants that are on a very high forage diet, whether on pasture or being fed stored forages during the pasture dormancy period, is essential practice for both profitability, water quality concerns, and is very important to balancing the ration given to the ruminant.

One commenter submitted that mineral and vitamin supplementation should not be routine, but only used when necessary for animal health purposes.

*Agency Responses:* Due to the diverse range and climate conditions across the United States, it is not practical to limit consumption to grass (forage) consumed by the animal only while pasturing and to restrict the use of harvested, stockpiled or stored forages. During periods of inclement weather or low forage quality, the welfare and nutritional needs of the animal must be taken into account. Allowing harvested or stockpiled forages will address the lack of readily available grass (forage) throughout the year. Accordingly, harvested forage without grain is allowed. AMS realizes that silage is a fermented vegetative product that has undergone significant chemical alteration and is not as ''green'' as other freshly chopped forages; however, restricting silage due to a ''green'' criterion is outside the scope of the standard. As stated previously in the document, language will be in the standard to exclude grain, specifically to exclude forage crops containing grain as eligible feed.

With regard to other supplements mentioned in the comments, AMS does agree that certain supplemental ingredients should not be allowed in the diet because they are not grass (forage). These ingredients include cereal grains, grain byproducts (starch and protein sources), cottonseed and cottonseed meal, soybean and soybean meal, non-protein nitrogen sources such as urea, and animal byproducts. By contrast,

roughage (e.g.≤, cottonseed hulls, peanut hulls, and almond hulls), defined as any feed high in crude fiber and low in total digestible nutrients, on an air-dry basis, can be supplemented in a grass (forage)-based diet because it is low in nutrients and its bulk stimulates peristalsis. Further, AMS believes that mineral and vitamin supplements should be allowed so the animal's nutrient intake can be adjusted and that deficiencies in the diet can be corrected.

**Related Production Issues Including Access to Pasture, Confinement, and Antibiotics and Hormones**

*Comments:* Many of the comments received from both producers and consumers were explicit in that they want grass fed raising practices distinguished from conventional feeding practices. Commenters wrote that consumers of grass fed animal products reasonably expect that these animals are raised on pasture, in contrast to the feedlots and other confinement operations typical of conventional animal agriculture. Others specifically stated that they do not want the grass (forage) fed label to mean an animal has been confined for up to 220 days, fed corn silage, and administered antibiotics and growth hormones. Others requested for AMS to ensure that grass (forage) fed means range or pasture raised, not produced from a conventional confinement operation.

Many commenters also urged AMS to move quickly to develop the revised requirements for livestock labeling claims related to hormones, antibiotics, and pasture requirements. Commenters stated that the grass (forage) fed claim will only become truly effective when it comprehensively includes hormone, antibiotic, and free-range or pasture fed standards.

Another issue raised was that the proposed standard neglected to specify or require that animals be raised on pasture. Some commenters specifically stated the term grass (forage) fed is, and should continue to be, synonymous with animals having free access to pasture or rangeland. Many other commenters stated that grass (forage) fed should mean animals humanely raised in grass pastures from birth to harvest. Other commenters stated that the 99 percent provision was appropriate, but only in conjunction with the expectation that the bulk of an animal's nutrition will come from a live, green pasture where, according to season, the animal shall predominantly be raised.

Others commented that AMS should require that a significant amount of the grass in the animal's diet come from grass and forage consumed by animals while pasturing. Other commenters stated that at the minimum, animals should graze during the growing season but for no less than 120 days per year. One commenter said that grass fed ruminants must graze pasture during the entire growing season and that exceptions to this provision should be limited to (1) emergencies that may threaten the safety and well being of the animals or soil; and, (2) management practices such as roundups, sorting, shipping, and weaning. This commenter also stated that the provisions should not be interpreted as to exclude high intensity rotational grazing systems.

Some of the commenters also stated that similar to the issue of pasture raised, the grass (forage) fed claim should also mean animals are not to be raised in confinement (*e.g.*, feedlot). Some commenters suggested that grass fed animals should not be fed in confinement more than 20–30 days per calendar year, unless an emergency situation arises that poses a threat to the animal's health or well being (*e.g.*, fire, flood, and blizzard). Some suggested allowable confinement conditions that include: times when animals are sorted, shipped, weaned, sold, and harvested, and periods of extreme, adverse weather such as flooding, drought, or blizzards.

Another production practice on which AMS received comments was the use of antibiotics and hormones. Some of the commenters stated that in their view the grass (forage) fed standard should restrict the use of antibiotics and hormones. However, other commenters discussed the complexities in completely restricting the use of antibiotics.

*Agency Responses:* In the May 12, 2006, **Federal Register** Notice (71 FR 27662), AMS determined that meat produced from animals which meet the minimum requirements for grass (forage) feeding should be eligible for the grass (forage) fed claim and additional production practices that go beyond a grass (forage) fed diet should not be incorporated in this standard. Additional labeling claims can be made in conjunction with the grass (forage) fed claim (*e.g.*, free-range, no antibiotics or hormones administered) to highlight other production practices. AMS also has determined that animals must graze live pasture during the growing season as a requirement of the grass (forage) fed standard as it is inherent to the term grass (forage) fed. With regards to the issue of confinement and free-range, as stated in the May 12, 2006, **Federal Register** Notice (71 FR 27662), AMS recognizes the synergistic nature between grass feeding and free-range conditions; however, AMS has determined it is preferable to keep the terminology separate and develop two distinct standards for both grass (forage) fed and free-range claims, particularly in view of possible distinctions in their diet. Similarly, AMS has determined it is preferable to keep the terminology separate for the use of antibiotics and hormones.

**Verification, Compliance, and Labeling Issues**

*Comments:* Several commenters stated that while the audit-based verification procedures (USDA Process Verified Program) utilized to substantiate label claims provides a high degree of assurance, the cost of compliance with these standards can be unduly burdensome for small and mid-sized producers and that all possible steps be taken to reduce the fee-based requirements for participating in this program.

One commenter stated that it was unfortunate that this program does not maintain any penalties for producers and handlers who utilize the grass (forage) fed label without participating in the USDA Process Verified Program. Another comment recommended that FSIS establish a new provision within the Meat and Poultry Inspection Regulations and the Meat and Poultry Inspection Manual, Directives and Notices that would limit the usage of the term ''grass fed'' only to labels in which the producer and handler of the product were approved participants under a USDA Process Verified Program for grass (forage) fed labeling.

Other commenters stated a transition period for producers should be allowed so that they may continue to sell products that claim to be produced from grass fed animals while protocols are updated, and new labels are approved by FSIS, printed, and applied to the product. Another commenter asked to see language added that will not allow producers to include the term ''grass fed'' in their company name unless they are selling product verified by AMS. They stated if this provision is not added ranches will just change their ranch name to include the word grass fed instead of going through the paperwork required of USDA Process Verified Programs.

One commenter objected to the voluntary program because their main plant is located in Argentina and would not be able to be included in the program, even though 99 percent of all animals and 100 percent of all bulls and cows are grass fed in Argentina. This commenter stated that this program discriminates against imported meat and meat products, and is an added cost

to the end user, as the costs to approve the meat would be passed on to the consumer.

*Agency Responses:* Relative to the cost of AMS audit-based verification services, every effort has been made to make these services available in the most cost-effective manner possible to all applicants. The cost of AMS' verification services is outside the scope of voluntary marketing claim standards.

In response to the issue of penalties for producers and handlers who utilize a grass (forage) fed label without participating in the USDA Process Verified Program, it should be noted that all label claims, including the ones verified by a USDA Process Verified Program, must be approved by FSIS, LPDD. FSIS, LPDD develops and implements regulations and policies to ensure that meat, poultry, and egg product labeling is truthful and non-misleading. Under FMIA and PPIA, the labels of products must be approved by the Secretary of Agriculture, who has delegated this authority to FSIS, before these products can enter commerce. Accordingly, all labeling issues and questions, including requiring a USDA Process Verified Program for approval of a grass (forage) fed claim, transition periods, and the use of grass fed in a company's name must be addressed by FSIS.

The purpose of voluntarily participating in a USDA Process Verified Program is to obtain AMS verification for specific practices so that a livestock or meat producer's products can be differentiated in the marketplace. Although producers and handlers may use an approved grass (forage) fed label without participating in a USDA QSVP, the use of any official certificate, memoranda, marks, or other identifications, and devices for purposes of the Agricultural Marketing Act without complying with the program requirements may result in either a fine, imprisonment, or both. Section 203(h) of the Agricultural Marketing Act of 1946 authorizes the imposition of fines, imprisonment, or both for anyone who knowingly falsifies any official certificate, memorandum, mark, or other identification, or device for making such mark or identification, with respect to inspection, class, grade, quality, size, quantity, or condition, issued or authorized pursuant to USDA QSVP.

Relative to foreign producers who want to market grass (forage) fed products in the United States, a cost-effective, voluntary program to substantiate label claims can be developed between USDA and the appropriate national-level counterpart in the producer's country provided applicable FSIS regulatory approvals are in place.

**Perceptions Associated With Grass (Forage) Fed Claim**

*Comments:* Many commenters offered reasons for producing and consuming meat from grass fed animals. Commenters stated that as a consumer they wanted livestock raised in conditions that promote the animal's health and protect the environment, and in conditions that will produce meat products that contain the healthiest nutrients.

One commenter thought AMS should allow verifiable health claims, such as low fat, or future verifiable health claims, such as Conjugated Linoleic Acid (CLA) content. Another commenter also disagreed with any prohibition on any claims regarding levels of Omega-3 fatty acids and CLA in a specified serving of grass fed meat versus an identical serving of grain fed meat. These commenters stated that sufficient empirical scientific evidence now exists to clearly document the attributes of grass feeding in regard to Omega-3 fatty acids and CLA.

Several commenters suggested that while the exact benefits of increased CLA and the type and balance of Omega-3 fatty acids are still under evaluation, the possibility that meat derived from grass (forage) fed ruminants is better for consumers remains an open question. One commenter stated that they support AMS' position that requirements or characteristics beyond energy source (*i.e.*, level of CLA or Omega-3 fatty acids) should not be incorporated into the standard. This commenter stated that not all forages are equal in fatty acid composition and feeding different types of forages to different types of cattle across the country can result in differing concentrations of CLA and Omega-3 fatty acids in the final product. They agreed grass fed beef can contain significantly higher levels of these compounds than grain fed beef; however, they stated that the industry lacks evidence to suggest that these higher levels create a meaningful health benefit for humans and agreed that this issue warrants further investigation based on sound science.

*Agency Responses:* It will be up to the producer to make additional distinctions in their meat products beyond the grass (forage) fed claim. Further, it is up to an individual consumer to determine their reason for eating meat from animals fed grass (forage). Reasons consumers list for consuming meat from grass fed animals differ widely and such standards would be based on those various perceptions. However, this issue is not within the scope of this marketing claim standard. Nutritional issues on labels are more appropriately addressed through the FSIS, LPDD label approval process.

**Additional Issues Raised**

*Comments:* Some commenters also requested that the use of genetically engineered plants and forage be prohibited and that specifically the grass (forage) fed label should ensure the grass or forage used as feed not be sourced from pasture or harvested from grasses using genetically engineered varieties of alfalfa, Bahia grass, tall fescue, Italian ryegrass or other such grasses.

Several comments supported that the standard covers all ruminants, including cattle, goats, and sheep. However, multiple commenters requested that the standard be written so as to clearly indicate that dairy products derived from livestock meeting the grass (forage) fed standard can be marketed using grass (forage) fed claims. One commenter specifically proposed that the grass (forage) fed claim be applied to all ruminant animal products including meat, meat products, milk, milk products, animal fiber, and animal fiber products. Another commenter asked that the standard address the reality of what a grass fed chicken or a grass fed pig will eat.

One commenter also suggested that a standardized spelling of grass fed be determined to minimize confusion among producers, marketers, consumers, and industry organizations.

*Agency Responses:* At this time, a requirement prohibiting the use of genetically engineered plants is not included due to the lack of research showing effects on animals consuming genetically engineered plants. Further, this voluntary standard applies only to meat products from ruminants. Milk, milk products, animal fiber, and animal fiber products are determined to be outside the scope of this standard. AMS does agree a standardized spelling of grass fed would minimize confusion and has applied a standardized spelling to the standard.

Accordingly, AMS establishes the following voluntary U.S. Standard for Livestock and Meat Marketing Claims, in this notice.

**U.S. Standards for Livestock and Meat Marketing Claims, Grass (Forage) Fed Claim for Ruminant Livestock and the Meat Products Derived From Such Livestock.**

*Background:* This claim applies to ruminant animals and the meat and

meat products derived from such animals whose diet, throughout their lifespan, with the exception of milk (or milk replacer) consumed prior to weaning, is solely derived from forage, which for the purpose of this claim, is any edible herbaceous plant material that can be grazed or harvested for feeding, with the exception of grain. Forage-based diets can be derived from grass (annual and perennial), forbs (*e.g.*, legumes, *Brassica*), and browse. Animals cannot be fed grain or grain byproducts and must have continuous access to pasture during the growing season. Growing season is defined as the time period extending from the average date of the last frost in spring to the average date of the first frost in the fall in the local area of production. Hay, haylage, baleage, silage, crop residue without grain, and other roughage sources also may be included as acceptable feed sources. Consumption of seeds naturally attached to forage is acceptable. However, crops normally harvested for grain (including but not limited to corn, soybean, rice, wheat, and oats) are only eligible feed if they are foraged or harvested in the vegetative state (pre-grain).

Upon request, verification of this claim will be accomplished through an audit of the production process. The producer must be able to verify for AMS that the grass (forage) marketing claim standard requirements are being met through a detailed documented quality management system.

**Claim and Standard**

*Grass (Forage) Fed*—Grass and forage shall be the feed source consumed for the lifetime of the ruminant animal, with the exception of milk consumed prior to weaning. The diet shall be derived solely from forage consisting of grass (annual and perennial), forbs (*e.g.*, legumes, Brassica), browse, or cereal grain crops in the vegetative (pre-grain) state. Animals cannot be fed grain or grain byproducts and must have continuous access to pasture during the growing season. Hay, haylage, baleage, silage, crop residue without grain, and other roughage sources may also be included as acceptable feed sources. Routine mineral and vitamin supplementation may also be included in the feeding regimen. If incidental supplementation occurs due to inadvertent exposure to non-forage feedstuffs or to ensure the animal's well being at all times during adverse environmental or physical conditions, the producer must fully document (*e.g.*, receipts, ingredients, and tear tags) the supplementation that occurs including the amount, the frequency, and the supplements provided.

**Authority:** 7 U.S.C. 1621–1627.

Dated: October 10, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–20328 Filed 10–15–07; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Bridger-Teton National Forest, Greys River Ranger District, Wyoming. Upper Greys Vegetation Treatment

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The analysis area of 11,855 acres is located in the Upper Greys River watershed on the Greys River Ranger District of the Bridger-Teton National Forest. It is approximately 20 miles southeast of Afton, Wyoming on the west slope of the Wyoming Range. All lands within the 11,855 acre analysis area are National Forest System lands, within Lincoln County, Wyoming. The legal description includes portions of: T30N, R116W and T29N, R116W.

**DATES:** Comments concerning the scope of the analysis must be received by November 15, 2007. The draft environmental impact statement is expected in February 2008 and the final environmental impact statement is expected in April 2008.

**ADDRESSES:** Send written comments to: District Ranger, Greys River Ranger District, P.O. Box 339, Afton, Wyoming. For further information, mail correspondence to: *mailroom_r4_bridger_teton@fs.fed.us* and on the subject line put only ''Upper Greys River Vegetation Treatment.''

**FOR FURTHER INFORMATION CONTACT:** District Ranger, Greys River Ranger District, P.O. Box 339, 641 N. Washington St., Afton, Wyoming 83110, or phone (307) 886–5310.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

The purpose of the proposed action is to attain desired vegetation conditions including increased diversity of tree age and size classes, improve the health and vigor of some mature timber stands and reduce the risk of stand replacing fire. It further reduces soil erosion and sedimentation from existing sources. A stand replacing fire is highly likely in this area due to dense, mature forests with an abundance of down dead and ladder fuels and would be apt to change the area from mature forest to grasses and forbs, damage existing seedlings, saplings and young forest. The loss of vegetation would also create conditions conducive to excess soil erosion over the landscape. The Bridger-Teton National Forest Land and Resource Management Plan (LRMP) and the 2004 Greys River Landscape Scale Assessment (LSA) have both identified opportunities for vegetation treatments to help improve resource conditions. The LSA found that the lodgepole pine vegetation in the Greys River falls outside the range of properly functioning condition and identified an opportunity to treat over 7,000 acres by 2010.

*Alternative 1—Proposed Action*

This proposal was developed primarily to help achieve desired conditions described in the LSA while responding to issues from previous public scoping, changes in resource demand, and recently identified resource issues. It is designed to improve Forest resource conditions as identified in the LSA.

The proposal is to treat approximately 591 acres and reduce existing sediment sources within the 11,855 acre analysis area which lies in the upper Greys River drainage. The proposed action would take place from approximately 2008 through 2011 and would include:

1. Commercial harvest of approximately 591 acres of mixed conifer timber.

- Approximately 436 acres would be treated using a clearcutting silvicultural system.
- Approximately 155 acres would be treated using a selection silvicultural system to remove dead and dying trees, low vigor trees, or small groups of trees less than 2 acres in size, while retaining 40 to 70% of healthy trees in the stand.
- Approximately 4.5 miles of temporary road would be constructed and then closed and rehabilitated after use. These would be mostly short spurs to access log landing areas off the main roads. Approximately 1.5 miles of existing closed roads would be used for timber hauling and closed and rehabilitated after use.

2. Identifying segments of existing logging roads and trails, including all culverts and creek crossings, that have the potential to erode, particularly those segments that are delivering, or have the potential to deliver, sediment to stream channels and other water bodies. Restore identified areas to *Elimination Class 3 and 4* (as defined in the Forest

Plan). Segments of the designated road system would be reconstructed to improve drainage, reduce sediments, ensure fish passage and provide improved public safety before log hauling could occur.

3. Treating slash created from timber harvest by broadcast burn or pile burn.

All treatments are planned within Desired Future Condition (DFC) area 1B. The management emphasis for DFC 1B is scheduled wood fiber production and use, livestock production, and other commodity outputs.

**Possible Alternatives**

*Alternative 2—No Action Alternative*

This alternative is required under NEPA regulations and also serves as a baseline of information for comparison of other alternatives. Though this alternative does not respond to the purpose and need for action, it does address some issues.

**Responsible Official**

Jay Dunbar, District Forest Ranger, Greys River Ranger District, Afton, Wyoming.

**Nature of Decision To Be Made**

This decision will be whether or not to implement specific vegetation management projects and associated road improvements, as allowed in the LRMP and LSA. The decision would include any mitigation measures needed in addition to those prescribed in the LRMP.

**Scoping Process**

The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies interested in or affected by this project. In addition, comments submitted on the March 9, 2007 scoping effort will also be considered in preparation of the Draft Environmental Impact Statement. Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. News releases will be used to give the public general notice. Public participation activities would include requests for written comments. The first formal opportunity to comment is to respond to this notice of intent, which initiates the scoping process (40 CFR 1501.7). Scoping includes: (1) Identifying potential issues, (2) narrowing the potential issues and identifying significant issues of those that have been covered by prior environmental review, (3) exploring alternatives in addition to No Action, and (4) identifying potential environmental effects of the proposed action and alternatives.

**Preliminary Issues**

The Forest Service has identified the following potential issues. Your input is especially valuable here. It will help us determine which of these merit detailed analysis. It will also help identify additional issues related to the proposed action that may not be listed here.

*Issue 1*—The effects of vegetative treatment on lynx foraging habitat, security cover for elk and other habitat, including Snake River cutthroat trout habitat.

*Issue 2*—The effects of vegetative treatment on forest health, specifically the high proportion of older age class conifer stands and declining tree condition, including high dwarf mistletoe infection levels in lodgepole pine.

*Issue 3*—The effects of vegetative treatment on fuel loading. High fuel loadings exist in dead and down material, as well as from recent mortality losses, due to mountain pine beetle and long-term site productivity.

*Issue 4*—The effects of roads and harvest activities on water quality.

**Comment Requested**

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

The Draft EIS (DEIS) is proposed to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in the winter of 2008. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: October 4, 2007.

**Heidi Whitlatch,**

*Acting District Forest Ranger.*

[FR Doc. 07–5072 Filed 10–15–07; 8:45 am]

**BILLING CODE 3410–11–M**

## BROADCASTING BOARD OF GOVERNORS

### Meeting

*Date and Time:* Wednesday, October 17, 2007. 1 p.m.–2:45 p.m.

*Place:* Office of Cuba Broadcasting, Conference Room, 4201 NW. 77th Ave., Miami, FL 33166.

*Closed Meeting:* The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This

meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6))

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: October 9, 2007.

**Carol Booker,**

*Legal Counsel.*

[FR Doc. 07–5118 Filed 10–12–07; 12:01 pm]

**BILLING CODE 8610–01–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–428–840, A–580–860, A–570–920, C–570–921)**

### Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petitions: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China; and the Countervailing Duty Petition: Lightweight Thermal Paper from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**EFFECTIVE DATE:** October 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Minoo Hatten at (202) 482–1690 and Dmitry Vladimirov at (202) 482–0665 (Republic of Korea); Blanche Ziv at (202) 482–4207, Hallie Zink at (202) 482–6907, and Scott Holland at (202) 482–1279 (People's Republic of China), Victoria Cho at (202) 482–5075 and Christopher Hargett at (202) 482–4161 (Germany), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## EXTENSION OF INITIATION OF INVESTIGATIONS

### The Petitions

On September 19, 2007, the Department of Commerce (Department) received antidumping and countervailing duty petitions filed by Appleton Papers, Inc. (petitioner) on behalf of the domestic industry producing lightweight thermal paper. *See Antidumping Duty Petitions on Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China and Countervailing Duty Petition on Lightweight Thermal Paper from the People's Republic of China* (September 19, 2007) (Petitions).

### Determination of Industry Support for the Petition

Section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), requires that a petition be filed by or on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) if there is a large number of producers, determine industry support using a statistically valid sampling method to poll the industry.

### Extension of Time

Section 732(c)(1)(A)(ii) of the Act provides that within 20 days of the filing of an antidumping duty petition, the Department will determine, inter alia, whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Section 732(c)(1)(B) of the Act provides that the deadline for the initiation determination, in exceptional circumstances, may be extended by 20 days in any case in which the Department must ''poll or otherwise determine support for the petition by the industry.'' Because it is not clear from the petition whether the industry support criteria have been met, the Department has determined to extend the time for initiating an investigation in order to poll the domestic industry.

The Department will need additional time to analyze the domestic producers' responses to the Department's request for information. Therefore, it is necessary to extend the deadline determining the adequacy of the petition for a period not to exceed 40 days from the filing of the petition. As a result, the initiation determination will now be due no later than October 29, 2007.

### International Trade Commission Notification

The Department will contact the International Trade Commission (ITC) and will make this extension notice available to the ITC.

Dated: October 09, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7–20345 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–533–838**

### Carbazole Violet Pigment 23 from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

At the request of an interested party, the Department of Commerce (the Department) initiated the administrative review of the antidumping duty order on carbazole violet pigment 23 from India for the period December 1, 2005, through November 30, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On August 22, 2007, we extended the due date for the completion of the preliminary results of reviews by 45

days. See *Carbazole Violet Pigment 23 from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 46954 (August 22, 2007). The preliminary results of the review are currently due no later than October 19, 2007.

**Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because we need additional time to obtain and analyze information regarding suspended entries of the subject merchandise during the period of review. Therefore, we are extending the time period for issuing the preliminary results of this review by 45 days until December 3, 2007.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 10, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretaryfor Import Administration.*

[FR Doc. E7–20346 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–809]**

### Certain Forged Stainless Steel Flanges From India; Notice of Final Results of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 31, 2007, the Department of Commerce (the Department) published the preliminary results of the new shipper administrative review in the antidumping duty order covering certain forged stainless steel flanges from India. *See Certain Forged Stainless Steel Flanges From India: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 72 FR 41706 (July 31, 2007) (*Preliminary Results*). The merchandise covered by this review is certain forged stainless steel flanges, manufactured by Micro Forge (India) (Micro Forge), as described in the ''Scope of the Order'' section of this notice. The period of review (POR) is February 1, 2006 through July 31, 2006. We invited parties to comment on our *Preliminary Results*. We received no comments. Therefore, the final results are unchanged from those presented in the preliminary results. The final weighted–average dumping margin for Micro Forge is listed below in the section entitled ''Final Results of the Review.''

**EFFECTIVE DATE:** October 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 31, 2007, the Department published the preliminary results of the antidumping duty new shipper administrative review of certain forged stainless steel flanges from India. *See Preliminary Results*. The review covers Micro Forge, and the POR is February 1, 2006, through July 31, 2006. In the *Preliminary Results*, we assigned Micro Forge a margin based on adverse facts available. We invited parties to comment. We received no comments.

**Scope of the Order**

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.10.00 and 7307.21.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

**Final Results of the Review**

We determine the following percentage weighted–average margin exists for the period February 1, 2006, through July 31, 2006:

| Manufacturer / Exporter | Weighted Average Margin (percentage) |
|---|---|
| Micro Forge ..... | 210.00 |

**Liquidation**

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In this review, the Department is applying an adverse facts available rate of 210.00 percent to Micro Forge's U.S. sales. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. We will direct CBP to assess the appropriate assessment rate (210 percent) against the entered Customs values for the subject merchandise on each of Micro Forge's entries under the relevant order during the POR.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act): (1) for the company named above, the cash deposit rates will be the rate shown; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than–fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most

recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 162.14 percent. This rate is the ''All Others'' rate from the amended final determination in the LTFV investigation. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges From India*, 59 FR 5994 (February 9, 1994). These cash deposit requirements shall remain in effect until further notice.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(b)(5).

Dated: October 9, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7–20347 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–806**

### Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 21, 2007, the Department of Commerce (''the Department'') published the preliminary results of its new shipper reviews of the antidumping duty order on silicon metal from the People's Republic of China (''PRC''). *See Silicon Metal From the People's Republic of China: Preliminary Results of the 2005/2006 New Shipper Reviews*, 72 FR 28467 (May 21, 2007) (*Preliminary Results*). Based on our analysis of the record, including information obtained since the preliminary results, we have made changes to the margin calculations for both Jiangxi Gangyuan Silicon Industry Co. Ltd. (''Jiangxi Gangyuan'') and Shanghai Jinneng International Trade Co., Ltd.(Shanghai Jinneng''). *See* Final Results of Review section, below.

**EFFECTIVE DATE:** October 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Scot Fullerton or Michael Quigley, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–4047, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 21, 2007, the Department published the preliminary results of its new shipper reviews of the antidumping duty order on silicon metal from the PRC, and invited parties to comment on the preliminary results. *See Preliminary Results*. The new shipper reviews cover one exporter, Shanghai Jinneng and its affiliated producer, Datong Jinneng Industrial Silicon Co., Inc. (''Datong Jinneng''), and one producer/exporter: Jiangxi Gangyuan (hereinafter collectively ''Respondents''). *See Preliminary Results*. The period of review (''POR'') for these new shipper reviews is June 1, 2005, through May 31, 2006.

On June 11, 2007, we received additional data from both Respondents and Globe Metallurgical Inc. (''Petitioner'') regarding factors of production. On June 25, 2007, we received Respondents' case brief, and on June 26, 2007, we received Petitioner's case brief. On July 2, 2007, we received the Respondents' rebuttal brief, and on July 3, 2007, we received the Petitioner's rebuttal brief. On July 30, 2007, we held both a public and a closed hearing, and the transcripts of these hearings were placed on the record on August 6, 2007.

#### Scope of the Order

The product covered by the order and this review is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight, and silicon metal with a higher aluminum content containing between 89 and 96 percent silicon by weight. The merchandise under investigation is currently classifiable under item numbers 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule of the United States* (''HTSUS'') as a chemical product, but is commonly referred to as a metal. Semiconductor–grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this order. This order is not limited to silicon metal used only as an alloy agent or in the chemical industry. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### New Shipper Status

For these final results, no party has contested the *bona fides* of either Respondent's sales, therefore we continue to find, as in the *Preliminary Results*, that both Respondents have met the requirements to qualify as a new shipper during the POR and that the Respondents' sale of silicon metal to the United States is an appropriate transaction for a new shipper.

#### Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculation for both Jiangxi Gangyuan and Shanghai Jinneng.

#### Analysis of Comments Received

In the case and rebuttal briefs received from the parties after the *Preliminary Results*, we received comments on several issues, including the surrogate country selection and surrogate values used to value (1) electricity and (2) overhead, selling, general and administrative expenses, and profit . All issues raised in the case briefs are addressed in the *Issues and Decision Memorandum*, which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Issues and Decision Memorandum*, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum on file in the Central Records Unit (''CRU''), room B–099 of the Herbert C. Hoover Building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at <*http://ia.ita.doc.gov*>. The paper copy and electronic version of the *Issues and*

*Decision Memorandum* are identical in content.

**Final Results of Review**

We determine that the following antidumping duty margins exist:

SILICON METAL FROM THE PRC

| Manufacturer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| Shanghai Jinneng International Trade Company Ltd. | 7.93 |
| Jiangxi Gangyuan Silicon Industry Co. Ltd. | 50.62 |
| PRC–wide Rate | 139.49 |

For details on the calculation of the antidumping duty margin for Shanghai Jinneng, *see* Memorandum to the File, through Scot T. Fullerton, Program Manager, from Michael Quigley, International Trade Analyst, regarding *Silicon Metal from the People's Republic of China - Analysis Memorandum for the Final Results of New Shipper Review of Shanghai Jinneng International Trade Company Ltd.* (October 9, 2007). A public version of this memorandum is on file in the CRU.

For details on the calculation of the antidumping duty margin for Jiangxi Gangyuan, *see* Memorandum to the File, through Scot T. Fullerton, Program Manager, from Michael Quigley, International Trade Analyst, regarding *Silicon Metal from the People's Republic of China - Analysis Memorandum for the Final Results of New Shipper Review of Jiangxi Gangyuan Silicon Industry Co. Ltd.*(October 9, 2007). A public version of this memorandum is also on file in the CRU.

**Assessment of Antidumping Duties**

The Department will determine, and U.S. Customs and Border patrol (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes for companies with a calculated rate, where possible, we calculated importer–specific assessment rates for silicon metal from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales during the POR. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

**Cash Deposits**

The following cash–deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Shanghai Jinneng and Jiangxi Gangyuan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751 (a) (2) (C) of the Tariff Act of 1930, as amended (''the Act''): (1) For subject merchandise produced and exported by Jiangxi Gangyuan, or produced by Datong Jinneng and exported by Shanghhai Jinneng, the cash–deposit rate will be that established in the final results of these reviews; (2) for subject merchandise exported by Shanghai Jinneng but not manufactured by Datong Jinneng, the cash deposit rate will continue to be the PRC–wide rate (i.e., 139.49 percent); and (3) for subject merchandise exported by Shanghai Jinneng, but manufactured by any other party, the cash deposit rate will be the PRC–wide rate (*i.e.*, 139.49 percent).

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These reviews and notice are in accordance with sections 751(a)(1), 751(a)(2) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 9, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

**Appendix I**

General Issues

*Comment 1:* Selection of Surrogate Country

*Comment 2:* Electricity Valuation

*Comment 3:* Selection of Financial Statements

*Comment 4:* Quartz Valuation

*Comment 5:* Silica Fume By–Product Valuation

*Comment 6:* Steam Coal Valuation

*Comment 7:* Charcoal Valuation

*Comment 8:* Electrode Usage

Company–Specific Issues: Jiangxi Gangyuan

*Comment 9:* Clerical Errors in Calculating Freight

*Comment 10:* June 2005 Electricity Consumption

*Comment 11:* Work–In-Process Inventory

*Comment 12:* Silica Fume Offset During POR

Company–Specific Issues: Shanghai Jinneng / Datong Jinneng

*Comment 13:* Silicon Metal Fines Valuation

*Comment 14:* Packing Bags Valuation

*Comment 15:* High Aluminum Quartz

*Comment 16:* Quartz Yield Loss

*Comment 17:* Instructions to Customs

[FR Doc. E7–20344 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–894**

### Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On April 9, 2007, the U.S. Department of Commerce (the Department) published the preliminary results of the first administrative review of the antidumping duty order on certain tissue paper products (tissue paper) from the People's Republic of China (PRC). *See Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Preliminary Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 17477, (April 9, 2007) (*Preliminary Results*). This review covers the following exporters and/or producer/exporters: (1) Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively, Max Fortune); (2) Samsam Productions Ltd. and Guangzhou Baxi Printing Products Co., Ltd. (Guangzhou Baxi) (collectively, Samsam); (3) Foshan Sansico Co., Ltd., PT Grafitecindo Ciptaprima, PT Printec Perkasa, PT Printec Perkasa II, PT Sansico Utama, Sansico Asia Pacific Limited (collectively, the Sansico Group); (4) Vietnam Quijiang Paper Co., Ltd. (Quijiang); (5) China National Aero–Technology Import & Export Xiamen Corp. (China National); (6) Putian City Hong Ye Paper Products Co., Ltd. (Hong

Ye); (7) Putian City Chengxiang Qu Li Feng (Chengxiang); (8) Kepsco, Inc. (Kepsco); and (9) Giftworld Enterprise Co., Ltd. (Giftworld). The period of review (POR) is September 21, 2004, through February 28, 2006. Based on our analysis of the comments received and verification findings, we have made changes to certain surrogate values and to Max Fortune's margin. In addition, we have determined to rescind this review with respect to Samsam. Therefore, the final results differ from the *Preliminary Results*. We are also rescinding this review with respect to the Sansico Group and Quijiang.

**EFFECTIVE DATE:** October 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kristina Horgan or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0409, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

We published the preliminary results of the first administrative review on April 9, 2007, in the **Federal Register**. See *Preliminary Results*. Since the *Preliminary Results*, the following events have occurred:

On April 11, 2007, Seaman Paper Company of Massachusetts (petitioner) submitted comments on the Department's April 2, 2007, memorandum concerning telephone conversations with U.S. representatives of two producers of papermaking machines. On April 19, 2007, we issued a memorandum stating that the Department would postpone the briefing schedule for the final results until verification reports were issued for Max Fortune and Samsam. On April 23, 2007, the Sansico Group filed comments responding to petitioner's April 11, 2007, submission. On May 2, 2007, the Department issued a second supplemental questionnaire to the Sansico Group. On May 3, 2007, petitioner submitted comments on the Sansico Group's April 23, 2007, submission. On May 9, 2007, both petitioner and the Sansico Group requested a hearing.

From May 7 through May 9, 2007, the Department conducted a verification of Max Fortune's factors of production information at its facilities in Fujian, Fuzhou, PRC, while on May 11 and May 14, 2007, the Department conducted a verification of Max Fortune's sales information at its facilities in Hong Kong. *See* Memorandum to the File, regarding Verification of the Factors Responses of Max Fortune (FETDE) Paper Products Co., Ltd. (MFPP) in the Antidumping Duty Review of Certain Tissue Paper from the People's Republic of China, dated July 12, 2007. See also Memorandum to the File, regarding Verification of the Sales Responses of Max Fortune Industrial Limited in the Antidumping Duty Review of Certain Tissue Paper from the People's Republic of China, dated July 12, 2007 (Max Fortune Sales Verification Report).

On May 15, 2007, the Department verified the sales responses of Samsam at its facilities in Hong Kong. From May 16 to May 18, 2007, the Department verified the factors of production responses of Guangzhou Baxi at its facilities in Guangzhou, PRC, and on May 19, 2007, the Department verified the factors of production responses of Guilin Samsam Paper Products Ltd. (Guilin Samsam) at its facilities in Guilin, PRC. On May 21, 2007, the Department verified the sales responses of Samsam Premiums Ltd. (St. Clair Pakwell) at its facilities in Orange, CA. *See* Memorandum to the File, regarding Verification of the Sales & Factors Responses of Samsam Productions Limited in the Antidumping Duty Review of Certain Tissue Paper Products from the People's Republic of China, dated July 12, 2007. *See also* Memorandum to the File, regarding Verification of the Factors Responses of Guangzhou Baxi Productions Limited and Guilin Samsam Paper Products Ltd. in the Antidumping Duty Review of Certain Tissue Paper Products from the People's Republic of China, dated July 12, 2007. *See also* Memorandum to the File, regarding Verification of the Sales Responses of Samsam Premiums Ltd. (d.b.a. St. Clair Pakwell) in the Antidumping Duty Review of Certain Tissue Paper Products from the People's Republic of China, dated July 12, 2007.

On May 18, 2007, the Sansico Group responded to the comments submitted by petitioner on May 3, 2007, while on May 22, 2007, we received the supplemental questionnaire response from the Sansico Group. On June 22, 2007, the Department spoke via telephone with counsel for the Sansico Group about the verification of its unaffiliated supplier, scheduled for June 27, 2007. In this conversation, counsel for the Sansico Group informed the Department that the Sansico Group's unaffiliated supplier would not permit verification of all the information and sources of information listed in the Department's June 15, 2007, verification outline. The Sansico Group also placed a letter on the record, dated June 22, 2007, outlining the limited procedures to which its unaffiliated supplier would agree, if the Department's verifiers wished to visit the supplier's facilities. On June 22, 2007, the Department informed the Sansico Group that it would proceed with verification of the Sansico Group but would not visit the facilities of its unaffiliated supplier if the Department would not be allowed to verify the supplier's books and records for the POR.[1]

On June 25, 2007, the Department verified the ''no shipment'' responses of the Sansico Group in Jakarta, Indonesia, at the production facilities of PT Printec Perkasa. *See* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, regarding Verification of Sales Response of The Sansico Group in the Antidumping Duty Administrative Review of Certain Tissue Paper From the People's Republic of China, dated July 13, 2007.

On July 13, 2007, we invited parties to comment on our *Preliminary Results*. On July 20, 2007, the Sansico Group requested a seven–day extension of the deadline to submit rebuttal briefs, and on July 25, 2007, the Department granted that request. On July 31, 2007, the Department requested that the Sansico Group place on the record the Indonesian law stating that special permission is needed to audit the financial records of state–owned companies, as described in the Sansico Group's letter to the Department dated July 30, 2007.[2] On August 1, 2007, the Sansico Group placed this information on the record.

On August 3, 2007, we received case briefs from Max Fortune, the Sansico Group, and Target Corporation, an interested party to this proceeding. On August 6, 2007, we received case briefs from petitioner and Samsam. On August 16, 2007, Max Fortune requested a one–day extension of the deadline to submit rebuttal briefs, and on August 16, 2007, the Department granted that request. We received rebuttal briefs from petitioner, Max Fortune, and Samsam on August 20, 2007. On August 21, 2007, we received one additional rebuttal brief from petitioner and a rebuttal brief from the Sansico Group. On August 22, 2007, both petitioner and the Sansico Group submitted letters withdrawing their separate requests for a hearing.

[1] *See* Memorandum to the File, regarding Telephone Call Regarding Verification of Sansico Group's Indonesian Supplier, dated June 25, 2007.

[2] *See* Letter to the Secretary from the Sansico Group, regarding Response to Department's Request During the Verification of Sansico Group in Certain Tissue Paper Products from the People's Republic of China (July 30, 2007).

**Scope of the Antidumping Duty Order**

The tissue paper products subject to this order are cut–to–length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye–colored, surface–colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut–to–length sheets of tissue paper with a width equal to or greater than one–half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.[3]

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die–cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

[3] On January 30, 2007, at the direction of U.S. Customs and Border Protection (CBP), the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

**Analysis of Comments Received**

All issues raised in the briefs are addressed in the Memorandum to David M. Spooner, Assistant Secretary for Import Administration, regarding Issues and Decision Memorandum for the Final Results in the First Administrative Review of Certain Tissue Paper Products from the People's Republic of China, dated October 9, 2007 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

**Partial Rescission of Administrative Review**

In the *Preliminary Results*, the Department issued a notice of intent to rescind this administrative review with respect to the Sansico Group and Quijiang. We stated in the *Preliminary Results* that we would solicit additional information prior to the final results of this review from the Sansico Group to confirm the veracity of its no shipment claims. *See Preliminary Results*, 72 FR at 17480. Based on our analysis of information and comments received from interested parties on this issue, including a verification of the Sansico Group, the Department has determined to rescind this review with regard to the Sansico Group. *See* Issues and Decision Memorandum at Comment 3 for further discussion on this issue.

The Department did not receive comments on the preliminary decision to rescind this review with regard to Quijiang. *See Preliminary Results*, 72 FR at 17480. As the Department has no evidence to challenge this finding, the Department is rescinding this administrative review with respect to Quijiang.[4]

Finally, due to information discovered at verification and our analysis of information and comments received from interested parties on this issue, the Department has made a final determination to rescind this review with regard to Samsam. The Department has concluded that the single sale made by Samsam during the POR was not a *bona fide* commercial transaction. Specifically, the price, quantity, and timing of the sale, taken into consideration with the unique circumstances of the transaction, have led the Department to conclude that this was not a legitimate commercial transaction. Accordingly, the Department is rescinding the review with respect to Samsam. For an in–depth discussion on this issue, *see* Comment 4 of the Issues and Decision Memorandum; *see also* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, regarding The *Bona Fides* Analysis of Samsam Productions, Ltd.; Guangzhou Baxi Printing Products, Ltd.; Guilin Samsam Paper Products, Ltd.; and St. Clair Pakwell (collectively ''Samsam'') in the First Administrative of Certain Tissue Paper Products from the People's Republic of China, dated October 9, 2007.

[4] The Department notes that Quijiang is currently subject to an anti-circumvention inquiry in tissue paper from the PRC. *See Certain Tissue Paper Products from the People's Republic of China: Initiation of Anti-circumvention Inquiry*, 71 FR 53662 (September 12, 2006).

**Separate Rates**

Max Fortune requested a separate, company–specific antidumping duty rate. In the *Preliminary Results*, we found that Max Fortune met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 72 FR at 17480. The Department did not receive comments on this issue prior to these final results. Moreover, we have not received any information since the *Preliminary Results* with respect to Max Fortune that would warrant reconsideration of our separate–rates determination with respect to this company. Therefore, we have assigned an individual dumping margin to Max Fortune for this review period.

**Use of Facts Otherwise Available and the PRC–Wide Rate**

In the *Preliminary Results*, we found that China National, Hong Ye, Chengxiang, Kepsco, and Giftworld did not respond in a complete and timely manner to the Department's requests for information, and hence do not qualify for separate rates. Rather, we found that China National, Hong Ye, Chengxiang, Kepsco, and Giftworld are appropriately considered to be part of the PRC–wide entity, subject to the PRC–wide rate. *See Preliminary Results*, 72 FR at 17480–17481. The Department did not receive comments on this issue prior to these final results.

The Department also did not receive comments on its preliminary determination to apply adverse facts available (AFA) to the PRC–wide entity (including China National, Hong Ye, Chengxiang, Kepsco, and Giftworld) and has no evidence to challenge this finding. Therefore, we have not altered our decision to apply total AFA to the PRC–wide entity (including China National, Hong Ye, Chengxiang, Kepsco, and Giftworld) for these final results, in accordance with sections 776(a)(2)(A) and (B) and section 776(b) of the Tariff Act of 1930, as amended (the Act). *See id.* for a complete discussion of the Department's decision to apply total AFA to the PRC–wide entity (including China National, Hong Ye, Chengxiang, Kepsco, and Giftworld).

**Changes since the Preliminary Results**

Based on comments received from the interested parties and findings at verification, we have made the following company–specific changes to Max Fortune's margin calculation. 1) The Department revised certain of Max Fortune's freight and insurance expenses. *See* Max Fortune Sales Verification Report at 2 and 20. 2) The Department did not deduct domestic insurance expenses from Max Fortune's sales. *See* Max Fortune Sales Verification Report at 2 and 20. 3) The Department subtracted certain billing adjustments from Max Fortune's U.S. sales. *See* Issues and Decision Memorandum, at Comment 7, and Max Fortune Sales Verification Report at 2 and 16–17.

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and 782(e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

For the final results, in accordance with sections 776(a)(2) and 776(b) of the Act, the Department has determined that Max Fortune did not act to the best of its ability in providing necessary information involving missing sale(s) and certain sale(s) discounts, as found at verification, with respect to Max Fortune's U.S. sales database. *See* Issues and Decision Memorandum, at Comment 7, and Max Fortune Sales Verification Report at 2 and 14 and 18–19. Thus, as partial AFA the Department has applied the PRC–wide rate of 112.64 percent to the missing sale and incorporated the sale into Max Fortune's margin calculation. *See* Memorandum to the File, regarding Certain Tissue Paper from the People's Republic of China (PRC): Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively, Max Fortune) Analysis Memorandum for the Final Results of Review, dated October 9, 2007 (Max Fortune Analysis Memo). Because the Department used secondary information in this partial AFA determination, the Department corroborated the secondary information in accordance with section 776(c) of the Act and determined the PRC wide rate to be both reliable and relevant. *See* Issues and Decision Memorandum, at Comment 7.

Also, as facts available, the Department has used information on the record to apply one sales discount to all of Max Fortune's sales of subject merchandise to a certain U.S. customer. As partial AFA, the Department has calculated a second discount using an adverse value and also applied the discount to all of Max Fortune's sales of subject merchandise to a certain U.S. customer, regardless of whether each sale was subject to the discount. *See* Max Fortune Analysis Memo. Because the Department used information gathered in the course of the instant review for the facts available and the partial AFA discount determinations, there was no need for the Department to corroborate the information used, pursuant to section 776(c) of the Act. *See* Issues and Decision Memorandum, at Comment 7.

For the final results, we also revised our calculation of surrogate financial ratios for factory overhead, and used the revised ratio in our margin calculation. *See* Issues and Decision Memorandum, at Comment 2. *See also* Memorandum to the File, regarding Factors of Production Valuation Memorandum for the Final Results of Antidumping Administrative Review of Certain Tissue Paper Products from the People's Republic of China, dated October 9, 2007.

**Final Results of Review**

We determine that the following antidumping duty margins exist:

CERTAIN TISSUE PAPER FROM THE PRC

Individually Reviewed Exporters

| | |
|---|---|
| Max Fortune Industrial Ltd. ..... **PRC–Wide Rate**. | 0.07% |
| PRC–Wide Rate (including China National, Hong Ye, Chengxiang, Kepsco, and Giftworld) ..... | 112.64% |

For details on the calculation of the antidumping duty weighted–average margin for Max Fortune, *see* Max Fortune Analysis Memo. A public version of this memorandum is on file in the CRU.

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for tissue paper from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Max Fortune, the Department has calculated a *de minimus* margin for these final results, and therefore no cash deposit will be required for this company; (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that

have not been found to be entitled to a separate rate, including those companies for which this review has been rescinded, the cash deposit rate will be the PRC–wide rate of 112.64 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Interested Parties**

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 9, 2007.

**David M. Spooner,**

*Assistant Secretaryfor Import Administration.*

**APPENDIX I**

**General Issues**

*Comment 1:* Zeroing

*Comment 2:* Classification of Expenses in Financial Ratios

**Company–Specific Issues**

*Sansico Group–Related Issues*

*Comment 3:* Rescission of The Sansico Group

*Samsam–Related Issues*

*Comment 4a:* Application of Adverse Facts Available based on Verification Findings

*Comment 4b:* Verification Findings

*Comment 5:* Other Verification Findings

*Comment 6:* Clerical Errors in Preliminary Results

*Max Fortune–Related Issues*

*Comment 7:* Application of Adverse Facts Available based on Verification Findings

[FR Doc. E7–20349 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review, Application No. 07–00001.

**SUMMARY:** On October 10, 2007, the U.S. Department of Commerce issued an Export Trade Certificate of Review to East International Holdings, LLC (''EIH''). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2006).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

*Export Trade*

1. *Products:* All products.

2. *Services:* All services.

3. *Technology Rights:* Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services and Technology Rights):* Export Trade Facilitation Services, including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

1. With respect to the sale of Products and Services, licensing of Technology Rights, and provision of Export Trade Facilitation Services, EIH may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. EIH and its individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules so EIH may determined the availability of Products for export and effectively coordinated with its distributors in Export Markets.

*Terms and Conditions of Certificate*

1. EIH, including its officers, employees or agents, shall not intentionally disclose, directly or indirectly, to any Supplier (including parent companies, subsidiaries, or other entities related to any Supplier) any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods unless such information is already generally available to the trade or public.

2. EIH will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

*Definition*

''Supplier'' means a person who produces, provides, or sells a Product and/or Services.

*Protection Provided by Certificate*

This Certificate protects EIH and its directors, officers, and employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

*Effective Period of Certificate*

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

*Other Conduct*

Nothing in this Certificate prohibits EIH from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

*Disclaimer*

The issuance of this Certificate of Review to EIH by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of EIH or its Members or (b) the legality of such business plans of EIH or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in Export Trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V(D) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 10, 2007.

**Jeffrey Anspacher,**

*Director, Export Trading Company Affairs.*

[FR Doc. E7–20307 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Notice of Government Owned Invention Available for Licensing

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of Government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned in whole by the U.S. Government as represented by the Department of Commerce. The invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 222, Room A155, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–975–3482, or e-mail: *mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title for the invention as indicated below.

**SUPPLEMENTARY INFORMATION:** NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

[*NIST Docket Number:* 06–010]

*Title:* Self-Assembled Monolayer Based Silver Switches.

*Abstract:* The invention is a two-state switching device based on two electrodes separated by a self-assembled monolayer. At least one of the electrodes may be composed of silver and the other electrode of any electrically conductive material, such as metals, especially gold or platinum. In the high-resistance OFF state, the two electrodes are separated by a non-electrically conducting organic monolayer. Application of a negative threshold bias causes a silver ion filament to grow within the monolayer and bridge the gap between the two electrodes, changing the device into a low-resistance ON state. The device may be turned OFF by application of a positive threshold bias, which causes the ionic filament to retract back into the silver electrode. The device is easy to fabricate, smaller than currently available devices, and because the only required components are silver, another electrode and a self-assembled monolayer between them, it should be possible to incorporate this switch into a variety of device geometries.

Dated: October 3, 2007.

**James M. Turner,**

*Acting Director.*

[FR Doc. E7–20355 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–AV61**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 3 to the Fishery Management Plan for the Spiny Lobster Fishery of the Caribbean and Amendment 5 to the Joint Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare a draft environmental impact statement (DEIS); scoping meetings; request for comments.

**SUMMARY:** The Caribbean Fishery Management Council (Caribbean Council) intends to prepare a DEIS to describe and analyze management alternatives to be included in an amendment to the Fishery Management Plan (FMP) for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands and the FMP for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic. These alternatives will consider measures to implement a minimum import size on spiny lobster. The purpose of this notice of intent is to solicit public comments on the scope of issues to be addressed in the DEIS.

**DATES:** Written comments on the scope of issues to be addressed in the DEIS must be received by the Caribbean Council by November 15, 2007. A series of scoping meetings will be held in October 2007. See **SUPPLEMENTARY INFORMATION** for the specific dates, times, and locations of the scoping meetings.

**ADDRESSES:** Written comments on the scope of the DEIS and requests for additional information on the amendment should be sent to the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918; telephone: 787–766–5927; fax: 787–766–6239. Comments may also be sent by e-mail to *Graciela.Garcia-Moliner@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Graciela Garcia-Moliner; phone: 787–766–5927; fax: 787–766–6239; e-mail: *Graciela.Garcia-Moliner@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Spiny Lobster (*Panulirus argus*) in the Southeast Region is managed under a Caribbean Council FMP and a joint Gulf of Mexico and South Atlantic Council FMP. All three Southeast fishery management councils have expressed concern recently about the effects of imports of spiny lobster that are smaller than the size limits in the U.S. spiny lobster FMPs. In many instances, imports are also undersized based on size limits established in the country of origin. Many Caribbean and Central and South American nations share these concerns, and scientific evidence suggests that larvae from one area or region within this species' range may contribute to stock recruitment in other areas or regions.

The Caribbean Council has expressed intent to amend its Spiny Lobster FMP to consider application of a minimum size limit on imported spiny lobster. NMFS believes amendment of the Gulf of Mexico and South Atlantic Spiny Lobster FMP should be addressed concurrently. After conferring with the Gulf of Mexico and South Atlantic Councils, the Caribbean Council was designated as the administrative lead to address spiny lobster issues. Thus, the Caribbean Council will prepare one document, which contains an amendment to the Caribbean Spiny Lobster FMP and also an amendment to the Gulf and South Atlantic Spiny Lobster FMP.

The Caribbean Council will develop a DEIS to describe and analyze management alternatives to implement a minimum size limit on imported spiny lobster. The amendment will provide updates to the best available scientific information regarding *Panulirus argus*, and based on that information, the Councils will determine what actions and alternatives are necessary to protect spiny lobster throughout its range. Those alternatives may include, but are not limited to: A ''no action'' alternative regarding the fishery; alternatives to restrict the minimum import size based on carapace length; alternatives to restrict the minimum import size based on tail length; and alternatives to restrict the importation of meat, which is not whole lobster or tailed lobster.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Caribbean Council has identified this preliminary range of alternatives as a means to initiate discussion for scoping purposes only. This may not represent the full range of alternatives that eventually will be evaluated by the Caribbean Council.

Once the Caribbean Council completes the DEIS associated with the amendment to the Spiny Lobster Fishery of the Caribbean, it must be approved by a majority of the voting members, present and voting, of the Caribbean Council. Similarly, the Gulf of Mexico and South Atlantic Councils Spiny Lobster FMP amendment and associated DEIS must be approved by those Councils. After the Councils approve this document, the DEIS will be submitted to NMFS for filing with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Caribbean Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Councils will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS) and before adopting final management measures for the amendment. The Councils will submit both the final joint amendment and the supporting FEIS to NMFS for review by the Secretary of Commerce (Secretary) under the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final joint amendment for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the final joint amendment.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final joint amendment, its proposed implementing regulations, and its associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the FEIS, prior to final agency action.

#### Scoping Meeting Dates, Times, and Locations

All scoping meetings are scheduled to be held from 7 p.m. to 10 p.m. The meetings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to the Caribbean Council (see **ADDRESSES**).

October 16—Windward Passage Hotel, Charlotte Amalie, St. Thomas, USVI.

October 17—Buccaneer Hotel, Christiansted, St Croix, USVI.

October 23—Pierre Hotel, De Diego Avenue, San Juan, PR.

October 24—Ponce Golf and Casino Resort, 1150 Caribe Avenue, Ponce, PR.

October 25—Mayaguez Holiday Inn, 2701 Highway #2, Mayaguez, PR.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 11, 2007.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 07–5107 Filed 10–11–07; 4:13 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XD37**

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Salmon Bycatch Workgroup will meet in Anchorage, AK.

**DATES:** The meeting will be held on November 2, 2007, from 9 a.m. to 2 p.m.

**ADDRESSES:** The meeting will be held at the Hawthorn Suites, 1110 West 8th Avenue, Anchorage, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Diana Stram, Council staff; telephone: (907) 271–2809

**SUPPLEMENTARY INFORMATION:** The Committee will discuss salmon bycatch cap formulation alternatives for Bering Sea and Aleutian Islands trawl fisheries and develop recommendations.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: October 11, 2007.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–20322 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. PTO–P–2007–0037]**

### Grant of Interim Extension of the Term of U.S. Patent No. 4,971,802; MIFAMURTIDE

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of Interim Patent Term Extension.

**SUMMARY:** The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,971,802.

**FOR FURTHER INFORMATION CONTACT:** Raul Tamayo by telephone at (571) 272–7728; by mail marked to his attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to his attention at (571) 273–7728, or by e-mail to *Raul.Tamayo@uspto.gov.*

**SUPPLEMENTARY INFORMATION:** Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On August 8, 2007, IDM Pharma, agent/licensee of patent owner Novartis, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,971,802. Claims of the patent cover the product Mifamurtide having the active ingredient muramyl tripeptide phosphatidyl ethanolamine. The application indicates, and the Food and Drug Administration has confirmed, that a New Drug Application for the human drug product Mifamurtide has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the expiration date of the patent (November 20, 2007), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,971,802 is granted for a period of one year from the expiration date of the patent, i.e., until November 20, 2008.

Dated: October 4, 2007.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E7–20372 Filed 10–15–07; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[IC07–574–001, FERC–574]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

October 4, 2007.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier **Federal Register** notice of May 29, 2007 (72 FR 29489–29490) and has made this notification in its submission to OMB. Copies of the submission were also submitted to the commenters.

**DATES:** Comments on the collection of information are due by November 13, 2007.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of

Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7345. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings an original and 14 copies, of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC07–574–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''*eLibrary*'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676 or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

**SUPPLEMENTARY INFORMATION:**

## Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC 574 ''Gas Pipeline Certificates: Hinshaw Exemption.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.* 1902–0116.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of the sections 1(c), 4 and 7 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Natural Gas pipeline companies file applications with the Commission furnishing information in order for a determination to be made as to whether the applicant qualifies for an exemption under the provisions of the Natural Gas Act (section 1(c)). If the exemption is granted, the pipeline is not required to file certificate applications, rate schedules, or any other application or forms prescribed by the Commission.

The exemption applies to companies engaged in the transportation or sale for resale of natural gas in interstate commerce if: (a) They receive gas at or within the boundaries of the state from another person; (b) such gas is transported, sold, consumed within such state; (c) the rates, service and facilities of such company are subject to regulation by a State Commission.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 152.

5. *Respondent Description:* The respondent universe currently comprises 1 company (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 245 total hours, 1 respondent (average), 1 response per respondent, and 245 hours per response (rounded off and average time).

7. *Estimated Cost Burden to respondents:* 245 hours/2080 hours per years × $122,137 per year = $14,386. The cost per respondent is equal to $14,386.

**Statutory Authority:** Statutory provisions of sections 1(c), 4 and 7 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20286 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP06–143–001]**

## Algonquin Gas Transmission, LLC; Notice of Compliance Filing

October 5, 2007.

Take notice that on October 1, 2007, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 2007.

Algonquin states that the filing is being made in compliance with the ''Ordering Issuing Certificate,'' issued by the Commission on September 22, 2006 in the captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time October 15, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20295 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP07–451–000; CP07–452–000; CP07–453–000]**

### Black Bayou Storage LLC; Notice of Application

October 9, 2007.

Take notice that on September 25, 2007, Black Bayou Storage LLC (Black Bayou), 6733 South Yale Avenue, Tulsa, Oklahoma 74136, filed with the Commission an application, pursuant to section 7(c) of the Natural Gas Act, and Subpart F of Part 157, and Subpart G of Part 284 of the Commission's Regulations for: (1) A certificate of public convenience and necessity in Docket No. CP07–451–000 authorizing Black Bayou to construct and operate a natural gas storage facility and pipeline facilities connecting with Transcontinental Gas Pipe Line (Transco) and Kinder Morgan Louisiana Pipeline LLC (Kinder Morgan) in Cameron Parish, Louisiana; (2) a blanket certificate in Docket No. CP07–452–000 authorizing Black Bayou to construct, acquire, operate and abandon facilities; and (3) a blanket certificate in Docket No. CP07–453–000 authorizing Black Bayou to provide open-access firm and interruptible interstate natural gas storage and storage related services and the associated pre-granted abandonment authorization, as more fully set forth in the application which is open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Black Bayou proposes to construct, own, operate, and maintain a natural gas storage facility on the Black Bayou salt dome in Cameron Parish, approximately 15 miles west of Hackberry, Louisiana. Black Bayou states that it would construct and operate approximately 2.45 miles of 30-inch diameter pipeline connecting with Transco and approximately 4.7 miles of 24-inch diameter pipeline connecting with Kinder Morgan. Black Bayou also states that it would construct and operate a compressor station with a total of 18,940 HP. Black Bayou further states that the underground salt cavern storage facility would have a total working gas capacity of 15 billion cubic feet (Bcf) with a total of approximately 1,200 MMcf of maximum daily injection capability and approximately 1,200 MMcf of maximum daily withdrawal capability. Black Bayou seeks authorization to charge market-based rates for its proposed services.

Any questions regarding this application should be directed to John R. Staffier, Stuntz, Davis & Staffier, P.C., 555 Eleventh Street, NW., Suite 550, Washington, DC 20004, or via telephone at (202) 638–6588, facsimile at (202) 638–6581, or e-mail *jstaffier@sdsatty.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

*Comment Date:* October 30, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20320 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR08–1–000]**

### Enogex Inc.; Notice of Petition for Rate Approval

October 9, 2007.

Take notice that on October 1, 2007, Enogex Inc., (Enogex) filed a petition for approval of zonal rates for interruptible transportation services, pursuant to section 284.123(b)(2) of the Commission's regulations. Enogex requests that the Commission approve a maximum interruptible transportation rate of $0.3785 per MMBtu for service furnished in the East Zone and a maximum interruptible transportation rate of $0.0969 per MMBtu for service furnished in the West Zone provided. Enogex requests the maximum interruptible transportation rates it proposes to charge for services, pursuant to section 311 of the Natural Gas Policy Act to become effective January 1, 2008.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time October 22, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20319 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RT04–2–016]**

### ISO New England Inc. et al.; Notice of Filing

October 5, 2007.

Take notice that on October 3, 2007, ISO New England Inc. (ISO), hereby moves for a limited waiver of the Independence Audit requirement. Specifically, the ISO requests that the audit be; (1) Postponed until such time at which Commission auditors are performing their next audit of the ISO; and (2) conducted by Commission auditors.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 17, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20293 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL07–99–000; QF85–147–008]**

### Primary Energy of North Carolina LLC; Notice of Filing

October 4, 2007.

Take notice that on September 14, 2007, pursuant to 18 CFR 292.205(c), filed a request for a temporary limited waiver of the Commission's operating and efficiency standards in 18 CFR 292.205(a)(2), with respect to the qualifying status of its 52 MW cogeneration facility located in the Roxboro, North Carolina for calendar years 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 25, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20285 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP05–412–003]**

### Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 5, 2007.

Take notice that on October 3, 2007, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Thirteenth Revised Sheet No. 23G and Tenth Revised Sheet No. 413A, to be effective November 1, 2007.

Tennessee states that the purpose of the filing is to file revised tariff sheets that: (1) Implement the recourse

transmission rate authorized by the Order; and (2) list eight non-conforming agreements in its FERC Gas Tariff as required by the May 9, 2006 Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time October 15, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20294 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER08–20–000]**

## University of New Hampshire; Notice of Request for Expedited Consideration and Waivers Under Market Rule 1

October 5, 2007.

Take notice that on October 2, 2007, the University of New Hampshire (University) requests that the Commission void the designation of the University's cogeneration facility as a settlement-only generator or, in the alternative, waive Market Rule 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 17, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20298 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP06–365–000; CP06–366–000]**

## Bradwood Landing, LLC, NorthernStar Energy, LLC; Notice of Public Meetings To Take Comments on the Draft Environmental Impact Statement for the Proposed Bradwood Landing LNG Project

October 5, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is issuing this notice to announce a series of public meetings to take comments on the draft Environmental Impact Statement (EIS) issued by the FERC on August 17, 2007, for the proposed Bradwood Landing liquefied natural gas (LNG) Project. The draft EIS addresses the proposal by Bradwood Landing, LLC to construct and operate an LNG import terminal about 38 miles up the Columbia River from its mouth in Clatsop County, Oregon, and the associated 36-mile-long natural gas sendout pipeline proposed by NorthernStar Energy, LLC that would cross portions of Clatsop and Columbia Counties, Oregon, and Cowlitz County, Washington, to connect the Bradwood Landing LNG terminal with the existing Williams Northwest Pipeline Company interstate pipeline system near Kelso, Washington.

The FERC staff produced the draft EIS in cooperation with the U.S. Department of the Army Corps of Engineers, U.S. Department of Homeland Security Coast Guard, and the U.S. Department of Transportation. The draft EIS was delivered to the U.S. Environmental Protection Agency, and mailed to various federal, state, and local government agencies, elected officials, affected landowners, regional environmental organizations, Indian tribes, local libraries and newspapers, intervenors, and other interested parties.

The issuance of the draft EIS was noticed in the **Federal Register** on August 24, 2007, (72 FR 48629–48631). The deadline for comments on the draft EIS is December 24, 2007. In addition to, or in lieu of, sending in written comments on the draft EIS, the FERC and cooperating agencies invite you to attend the public comment meetings that will be held in Oregon and Washington in November 2007, on the dates, times, and locations listed below.

| Date and time | Location |
|---|---|
| Tuesday, November 6, 2007, 6:30 p.m. to 10 p.m. (PST). | J.A. Wendt Elementary School, 265 S. 3rd St., Cathlamet, Washington 98612, Telephone: 360–795–3261. |
| Wednesday, November 7, 2007, 9 a.m. to 12 p.m. (PST). | Cowlitz County Expo and Conference Center, 1900 7th Ave., Longview, Washington 98632, Telephone: 360–577–3121. |
| Wednesday, November 7, 2007, 6:30 p.m. to 10 p.m. (PST). | Cowlitz County Expo and Conference Center, 1900 7th Ave., Longview, Washington 98632, Telephone: 360–577–3121. |
| Thursday, November 8, 2007, 6:30 p.m. to 10 p.m. (PST). | Hilda Lahti Elementary School, 42535 Old Highway 30, Astoria, Oregon 97103, Telephone: 503–458–6162. |

These events are posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20296 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 943–102]**

## Public Utility District No. 1 of Chelan County; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 4, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 943–102.

c. *Date Filed:* September 14, 2007.

d. *Applicant:* Public Utility District No. 1 of Chelan County.

e. *Name of Project:* Rock Island Hydroelectric Project.

f. *Location:* The project is located on the Columbia River in Chelan County, Washington. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michelle Smith, License and Natural Resource Compliance Manager, Public Utility District No. 1 of Chelan County, P.O. Box 1231, Wenatchee, WA 98807–1231. Phone: (888) 663–8121, Ext. 4180.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at (202) 502–8951 or by e-mail: *jon.cofrancesco@ferc.gov.*

j. *Deadline for filing comments and/or motions:* October 26, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of the Application:* The Public Utility District No. 1 of Chelan County, Washington, licensee of the Rock Island Hydroelectric Project, has filed an application seeking authorization from the Federal Energy Regulatory Commission to grant a permit to Dr. Thomas Hurst for a 12-slip community dock for a 13 lot, 20-acre residential subdivision located on upland property adjacent to the project. The proposed 1,444 square-foot floating dock includes a ramp, a main float, and one T-section with six fingers on each side; extends 130 feet from the ordinary high water mark; and is located approximately four miles upriver from Rock Island dam in Chelan County, Washington.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20284 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12848–000]**

### FFP Project 6, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 4, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12848–000.

c. *Date Filed:* July 25, 2007.

d. *Applicant:* FFP Project 6, LLC.

e. *Name of the Project:* Algiers Light Project.

f. *Location:* The project would be located on the Mississippi River in Orleans Parish, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 6, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12848–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 1,000 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 20-megawatts, (2) a proposed transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 87.6-gigawatt-hours and be sold to a local utility.

l. Location of Application: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each

representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20287 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[FFP Project 18, LLC; Project No. 12857–000]**

## Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 4, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12857–000.

c. *Date Filed:* July 25, 2007.

d. *Applicant:* FFP Project 18, LLC.

e. *Name of the Project:* College Point Project.

f. *Location:* The project would be located on the Mississippi River in St. James Parish, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 18, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12857–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 1,000 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 20-megawatts, (2) a proposed transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 87.6-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT

TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20288 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2413–094]**

### Georgia Power Company; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

October 4, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2413–094.

c. *Date Filed:* August 23, 2007.

d. *Applicant:* Georgia Power Company.

e. *Name and Location of Project:* Wallace Dam Project is located on the Lake Oconee in Greene County, Georgia. The proposed project does not occupy federal lands.

f. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Lee Glenn, Georgia Power Company, 125 Wallace Dam Road, NE., Eatonton, GA 31024, (706) 485–8704.

h. *FERC Contact:* Gina Krump, Telephone (202) 502–6704, or by e-mail at *gina.krump@ferc.gov.*

i. Deadline for filing comments, protests, and motions to intervene: November 5, 2007.

All documents (original and eight copies) should be filed with Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The licensee is seeking Commission approval to issue a permit to Heron Cove Properties, LLC for the construction of five docks, totaling 42 slips, a 985-foot seawall, and a boat ramp on approximately 0.13 acre of project land. The proposal is for the use of residents at a condominium development. All proposed work is consistent with the current permitting limitations.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the project number excluding the last three digits (P–2413–094) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filling comments, it will be assumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20289 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2407–120]**

### Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 9, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance of Drawdown Limits.

b. *Project No.:* 2407–120.

c. *Date Filed:* September 4, 2007.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* The Yates and Thurlow Project.

f. *Location of Project:* The Yates and Thurlow Project is located on the Tallapoosa River in Tallapoosa and Elmore Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Alan L. Peeples, Alabama Power Company, 600 N. 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 257–1401.

i. *FERC Contact:* Henry Woo, (202) 502–8872.

j. Deadline for filing comments, protests, or motions to intervene: October 31, 2007. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The Alabama Power Company (APC) is requesting a temporary variance of the reservoir drawdown limits of the Yates and Thurlow Project license. APC requests that it be allowed to draw down the Thurlow pool to 283.0–284.5 feet from September 4, 2007, to January 11, 2008, for spillway board maintenance. Included in APC's request was concurrence received from the Alabama Department of Conservation and Natural Resources.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2407) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (g) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20317 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**Project No: P–803–087**

## Pacific Gas and Electric Company; Notice of Application Tendered for Filing with the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

October 9, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–803–087.

c. *Date Filed:* October 2, 2007.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* DeSabla-Centerville Hydroelectric Project.

f. *Location:* The existing project is located on Butte Creek and the West Branch Feather River in Butte County, California. The project affects 145.7 acres of federal lands administered by the Lassen National Forest, 2.1 acres of federal lands administered by the Plumas National Forest, and 11.6 acres of federal lands administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randal S. Livingston, Vice President-Power Generation, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code: N11E, San Francisco, CA 94177; Telephone (415) 973–7000.

i. *FERC Contact:* Aaron Liberty, (202) 502–6862 or *aaron.liberty@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The existing DeSabla-Centerville Hydroelectric Project is composed of three developments, including Toadtown, DeSabla, and Centerville, and has a combined installed capacity of 26,400 kilowatts (kW).

The Toadtown development, which diverts water from the West Branch Feather River, consists of the following constructed facilities: (1) Round Valley Reservoir, a 98 acre reservoir with a gross storage capacity of 1,700 acre-feet; (2) Round Valley dam, an earthfill dam, 29-feet high and 810-feet long; (3) a 40-foot wide overflow spillway; (4) a 15-inch outlet pipe at the base of Round Valley dam, and manual low level outlet valve; (5) Philbrook Reservoir, a 173 acre reservoir with a gross storage capacity of 4,985 acre-feet; (6) Philbrook main dam (located on Philbrook Creek), a compacted earthfill dam, 87-feet high and 850-feet long; (7) Philbrook auxiliary dam (170 feet to the right of the main dam), a compacted earthfill dam, 24-feet high and 470-feet long; (8) a 29.7-foot wide spillway with 5 flashboard bays; (9) a 10.75-foot long and 14.75-foot wide spillway with a single, manual radial gate; (10) a 33-inch diameter, 460-foot long outlet conduit from Philbrook Reservoir; (11) a 17-foot high, 8-feet diameter submerged vertical concrete intake, controlled by a 30-inch diameter manual needle valve; (12) Hendricks Head Dam, a concrete gravity

dam, 15-feet high with an overflow spillway section 98-feet wide; (13) a 8.66-mile long Hendricks Canal, composed mostly of earthen ditch with several flume and tunnel sections, with a capacity of 125 cfs; (14) feeder diversions from 4 creeks into Hendricks/Toadtown canal; (15) a 40-inch diameter, 1,556-foot long steel penstock; (16) Toadtown Powerhouse, a 28 by 44 foot reinforced concrete building, with one turbine-generator unit and a normal operating capacity of 1.5 MW; (17) a 1500-foot long 12 kv tapline connecting Toadtown Powerhouse to a distribution system; and (18) appurtenant facilities.

The DeSabla development, which diverts water from upper Butte Creek and uses the outflow of the Toadtown development, consists of the following constructed facilities: (1) The 2.4-mile long Toadtown Canal, an earthen canal with a capacity of 125 cfs; (2) Butte Creek Diversion Dam, a 50-foot high, 100-foot long, concrete arch dam with an overflow spillway; (3) a 11.4-mile long Butte Canal, composed of earthen berm sections, gunited sections, tunnel sections, a siphon, and flume sections, with a capacity of 91 cfs; (4) a 0.7-mile long canal that combines Butte Canal with Toadtown Canal, with a capacity of 191 cfs; (5) feeder diversions from 4 creeks that flow into Butte Canal (1 not in use); (6) DeSabla Dam, a 50-foot high, 100-foot wide earthen embankment with a spillway canal; (7) DeSabla Forebay, a 15 acre reservoir with a gross storage capacity of 163 acre-feet (originally 188 acre-feet); (8) a 66-inch diameter, reduced to 42-inch diameter, 1.3-mile long steel penstock; and (9) DeSabla Powerhouse, a 26.5 by 41 foot reinforced concrete building, with one turbine generator unit and a normal operating capacity of 18.5 MW; (10) a 0.25-mile long transmission tapline connecting DeSabla Powerhouse to the 60kV Oro Fino Tap Line; and (11) appurtenant facilities.

The Centerville development, which diverts the flow of Butte Creek downstream of the DeSabla development, consists of the following constructed facilities: (1) The Upper Centerville Canal, that originates at DeSabla Powerhouse and ends at Helltown Ravine (currently carries a few cfs for local water uses and has not been used for power generation for many years); (2) Lower Centerville Diversion Dam, a 12-foot high, 72.5 foot-wide concrete arch dam with an overflow spillway; (3) an 8-mile long Lower Centerville Canal, composed of earthen canal and several flume sections, with a capacity of 183 cfs; (4) feeder diversions from 3 creeks that flow into Lower Centerville Canal (all 3 no longer in use); (5) one 30-inch diameter and one 42-inch diameter, reduced to 36-inch diameter, 2,559-foot long steel penstocks; (6) Centerville Forebay, a 27 by 37 foot concrete header box with a spillway channel; (7) Centerville Powerhouse, a 32 by 109 foot reinforced concrete building, with two turbine-generator units and a total normal operating capacity of 6.4 MW; and (8) appurtenant facilities.

PG&E operates the project primarily as a run-of-river system and operates on a continuous basis, using the water supply available after satisfaction of the minimum instream flow requirements. During the winter and spring, base flows in the West Branch of the Feather River and Butte Creek typically provide adequate flow for full operation of the Project powerhouses. During the summer months, the available base flow water is augmented by water releases from Round Valley and Philbrook reservoirs. During the fall months, Project powerhouses are operated at reduced capacities due to low stream flows.

Water releases from Round Valley reservoir flow down the West Branch Feather River, and water releases from Philbrook reservoir pass down natural channels of Philbrook Creek and the West Branch Feather River about 8 miles to Hendricks Head dam. Then water is conveyed in the Hendricks canal, through Toadtown Powerhouse, then into the Toadtown canal. From this point, the water is conveyed in the Butte Creek canal to DeSabla Forebay then discharged into Butte Creek. Water flow is then diverted into the Lower Centerville canal to the Centerville header box, through the Centerville Powerhouse, and finally discharged to Butte Creek.

PG&E proposes to continue operating the Project with no change to Project generation facilities or features other than adoption of resource management measures and the deletion of five feeder diversions.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Tendering Notice | October 9, 2007. |
| Remaining Study Results Due | February 15, 2008. |
| Notice of Acceptance / Notice of Ready for Environmental Analysis | March 17, 2008. |
| Filing of recommendations, preliminary terms and conditions, and fishway prescriptions | May 16, 2008. |
| Commission issues Draft EA | November 12, 2008. |
| Comments on Draft EA | December 12, 2008. |
| Modified terms and conditions | February 10, 2009. |
| Commission issues Final EA | May 11, 2009. |

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20318 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Technical Conference and Extension of Comment Date

October 9, 2007.

Direct Energy Services, LLC, Docket No. RC07–4–000.

Sempra Energy Solutions LLC, Docket No. RC07–6–000.

Strategic Energy, L.L.C., Docket No. RC07–7–000.

Take notice that on October 12, 2007, a technical conference will be held at the Federal Energy Regulatory Commission to discuss appeals of the North American Electric Reliability Corporation's (NERC) compliance registry determinations regarding Direct Energy Services, LLC (Direct), Sempra Energy Solutions LLC (Sempra) and Strategic Energy, L.L.C. (Strategic). This technical conference was established in an Order Establishing Technical Conference in the above dockets, issued September 26, 2007.[1] It will be held at the headquarters of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC from 11 a.m.–2 p.m. (EST).

The technical conference will consist of a discussion between Commission staff and representatives of NERC and ReliabilityFirst Corporation (ReliabilityFirst). Direct, Sempra and Strategic are also invited to participate. The primary question to be addressed is whether NERC has adequately justified its determination that ReliabilityFirst properly registered Direct, Sempra and Strategic as load-serving entities (LSEs).

NERC and ReliabilityFirst will be asked to address issues concerning the decision to register Direct, Sempra and Strategic, including but not limited to: the nature and extent of any gap in reliability that may result from their not being registered as an LSE; the circumstances within the ReliabilityFirst region that justify their registration as LSEs, while other Regional Entities have registered retail power marketers only as purchasing-selling entities; the identification of the Reliability Standard requirements that would apply to a retail power marketer registered as an LSE; support for the conclusions (i) that the loads served by Direct, Sempra and Strategic are directly connected to the Bulk-Power System and (ii) that retail power marketers within the ReliabilityFirst region, in the aggregate, impact Bulk-Power System reliability; and alternative solutions for addressing any reliability gaps that may be identified.

The conference is open for the public to attend. The conference will not be transcribed and telephone participation will not be available.

The Commission will accept written comments on the discussion at this technical conference no later than 5 p.m. Eastern Time on October 29, 2007. Further, in notices of filing issued September 17, 2007, in the above-captioned dockets, the Commission set an October 11, 2007 comment date for the submission of interventions, comments and protests. The Commission is extending the comment date for the submission of interventions, comments and protests in the above-captioned dockets until October 29, 2007, to coincide with the comment due date for comments on the discussion at the technical conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, (202) 502–8004, *sarah.mckinley@ferc.gov.*

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20316 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**Docket No. AD07–13–000**

### Conference on Enforcement Policy; Second Notice of Conference

October 4, 2007.

As announced in the ''First Notice of Conference on Enforcement,'' issued on July 11, 2007, the Federal Energy Regulatory Commission (Commission) will hold a conference on November 16, 2007, to examine the implementation of its enforcement authority as expanded by the Energy Policy Act of 2005 (EPAct 2005).[1] The conference will be held in the Commission Meeting Room at the Commission's headquarters located at 888 First Street, NE., Washington, DC 20426.

The purpose of the conference is to assess the enforcement program implemented by the Commission during the first two years after passage of EPAct 2005 primarily as it pertains to the additional subject matter authority and the expanded civil penalty authority in Part II of the Federal Power Act[2] and the Natural Gas Act.[3]

The tentative schedule and topics for the conference are as follows:

9 a.m.–9:30 a.m.—Opening Remarks

9:30 a.m.–11 a.m.—First Panel—*The First Two Years of EPAct Enforcement*

11 a.m.–11:10 a.m.—Break

11:10 a.m.–12:30 p.m.—Second Panel—*How Enforcement Fits into the Commission's Mission*

12:30 p.m.–1:30 p.m.—Lunch break

1:30 p.m.–3 p.m.—Third Panel—*Enforcement of Reliability Standards*

3 p.m.–3:15 p.m.—Closing Remarks

The first panel will focus on an overview of enforcement from a broad policy perspective, including how the Commission balances a firm approach to enforcement of its major rules, regulations, and orders with fair treatment of all persons that may be subject to remedies and sanctions for their conduct. The discussion will examine how the Commission can best achieve compliance with regulatory requirements, and will address how the Commission evaluates enforcement cases, including self-reported violations and matters that result in no penalty, and how companies subject to investigation can best respond to the Commission.

The second panel will focus on how entities relate to the Commission in light of the newly enhanced EPAct 2005 enforcement authority and the Commission's ongoing regulatory functions. The discussion will examine when companies should direct inquiries or problems to the Office of Enforcement and when they should be directed to other Commission program offices. The Commission is interested in how well the Commission responds to matters that involve regulatory policy as well as having enforcement aspects. In

[1] *Direct Energy Services, LLC, et al.*, 120 FERC ¶ 61,280 (2007).

[1] Pub. L. 109–58, 119 Stat. 594 (2005).

[2] 16 U.S.C. § 791a *et seq.* (2000).

[3] 15 U.S.C. § 717 *et seq.* (2000).

addition, the discussion will focus on the relationship between the Commission's audit functions and enforcement activity and whether the No-Action Letter program [4] is useful in obtaining guidance on potential enforcement issues.

The third panel will focus on reliability issues. With the new responsibilities given to the Commission by EPAct 2005 with respect to the reliability of the nation's bulk power system, the Commission has approved numerous reliability standards that now are mandatory, and has authorized an enforcement mechanism through Regional Entities and the Electric Reliability Organization (ERO). This discussion will look at how the Regional Entities and the ERO are processing self-reported violations and other compliance matters, and will address emerging practical issues of enforcement as well as the Commission's own authority to enforce mandatory reliability standards and its interest in the most effective way to achieve compliance with the standards.

A further notice will be issued before the conference to finalize the conference format and schedule. The Commission anticipates that it will also issue background material to assist in framing the discussion. Also, we note that the following topics will not be discussed as they are involved in or implicated by pending Commission proceedings: standards of conduct, market monitoring, transparency, and market manipulation.

To ensure adequate time to engage in a meaningful dialog, participants on each panel will be limited to four or five people. Anyone interested in participating as a panelist may contact Anna Cochrane, Deputy Director of the Office of Enforcement, by e-mail at *anna.cochrane@ferc.gov* or by phone at (202) 502–8100.

As previously noted, all interested persons are invited to attend the conference, and there is no registration fee to attend. The conference will not be transcribed but will be web cast. A free web cast of this event will be available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its web cast. The Capitol Connection provides technical support for the web casts and offers access to the meeting via phone bridge for a fee. If you have any questions, you may visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

FERC conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20290 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

[4] *Informal Staff Advice on Regulatory Requirements*, 113 FERC ¶ 61,174 (2005), *as modified by* 117 FERC 61,069 (2006).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP07–398–000; CP07–399–000; CP07–400–000; CP07–401–000; CP07–402–000]**

## Gulf Crossing Pipeline Company, LLC; Gulf South Pipeline Company, L.P; Notice of Applicant Meeting

October 5, 2007.

On October 11, 2007, the Office of Energy Projects (OEP) staff will meet with representatives of Gulf Crossing Pipeline Company, LLC (Gulf Crossing); co-applicant in the above referenced dockets.

Gulf Crossing requests the meeting to discuss the possible reconfiguration of some of the compressor stations proposed in the Gulf Crossing Project. Gulf Crossing will present details of, and reasons for, the possible modification to its certificate application. Gulf Crossing and OEP Staff will discuss the proposed timing of the amendment to the certificate application and any impact to the project schedule.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–20297 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. AD07–15–000]**

## State of the Natural Gas Industry Conference; Notice of Commission Conference

October 5, 2007.

The Federal Energy Regulatory Commission will hold a conference on November 6, 2007, from 9:30 a.m. to 12:30 p.m. (EST), in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

All interested persons may attend; there is no registration and no fee.

The conference will provide the Commission the opportunity to hear from knowledgeable industry experts and discuss the challenges facing the natural gas industry and its customers. A future notice will provide greater detail.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone, or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations. Additional details and the agenda for this conference will be included in a subsequent notice. For more information about the conference, please contact John Schnagl at (202) 502–8756 (*john.schnagl@ferc.gov*).

**Kimberly Bose,**

*Secretary.*

[FR Doc. E7–20299 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

October 10, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP03–36–028.

*Applicants:* Dauphin Island Gathering Partners.

*Description:* Dauphin Island Gathering Partners submits its Thirty-Fourth Revised Sheet 9 *et al.* to its FERC Gas Tariff, First Revised Volume 1, to become effective 11/4/07.

*Filed Date:* 10/04/2007.

*Accession Number:* 20071005–0075.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 16, 2007.

*Docket Numbers:* RP03–323–013.

*Applicants: Williston Basin Interstate Pipeline Co.*

*Description: Williston Basin Interstate Pipeline Company submits negotiated Rate Schedule FT–1 Service Agreement.*

*Filed Date: 10/02/2007.*

*Accession Number: 20071003–0228.*

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP06–200–037.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* Rockies Express Pipeline LLC submits Thirtieth Revised Sheet 22 *et al.* to FERC Gas Tariff, First Revised Volume 1 to be effective 10/10/07.

*Filed Date:* 10/09/2007.

*Accession Number:* 20071010–0079.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* RP97–255–076.

*Applicants:* TransColorado Gas Transmission Company.

*Description:* TransColorado Gas Transmission Co submits Fifteenth Revised Sheet 21 *et al.* to FERC Gas Tariff, First Revised Volume 1 to be effective 9/9/07.

*Filed Date:* 10/09/2007.

*Accession Number:* 20071010–0080.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* RP08–14–001.

*Applicants:* Texas Eastern Transmission LP.

*Description:* Texas Eastern Transmission, LP re-submits the entire Service Agreement including the corrected Exhibit A as well as the accompanying redlines comparing the agreement to its 10/1/07 filing.

*Filed Date:* 10/04/2007.

*Accession Number:* 20071009–0091.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 16, 2007.

*Docket Numbers:* RP08–19–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* Guardian Pipeline LLC submits Original Sheet 7 *et al.* to its FERC Gas Tariff, Original Volume 1, to become effective 11/1/07.

*Filed Date:* 10/04/2007.

*Accession Number:* 20071005–0076.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 16, 2007.

*Docket Numbers:* RP08–20–000.

*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas Company submits Third Revised Sheet 153 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1.

*Filed Date:* 10/05/2007.

*Accession Number:* 20071009–0092.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 17, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Acting Deputy Secretary.*

[FR Doc. E7–20339 Filed 10–15–07; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OW–2003–0064, FRL–8482–7]**

### U.S. EPA's National Clean Water Act Recognition Awards Presentation During the Water Environment Federation's Technical Exposition and Conference (WEFTEC), and Announcement of 2007 National Awards Winners

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency recognized municipalities and industries for outstanding and innovative technological achievements in wastewater treatment and pollution abatement programs. An inscribed plaque was presented to first and second place national winners at the annual Clean Water Act Recognition Awards presentation during the Water Environment Federation's Technical Exposition and Conference (WEFTEC). Recognition is made every year for outstanding programs and projects in operations and maintenance at wastewater treatment facilities, biosolids management and public acceptance, municipal implementation and enforcement of local pretreatment programs, cost-effective storm water controls, and combined sewer overflow controls. This action also announces the 2007 national awards winners.

**DATES:** Monday, October 15, 2007, 11:30 a.m. to 1 p.m.

**ADDRESSES:** The national awards presentation ceremony was held at the San Diego Convention Center, San Diego, California.

**FOR FURTHER INFORMATION CONTACT:** William Hasselkus, Telephone: (202) 564–0664. Facsimile Number: (202) 501–2396. E-Mail: *hasselkus.william@epa.gov.* Also visit

the Office of Wastewater Management's Web page at *http://www.epa.gov/owm.*

**SUPPLEMENTARY INFORMATION:** The Clean Water Act Recognition Awards are authorized by section 501(a) and (e) of the Clean Water Act, and 33 U.S.C. 1361(a) and (e). Applications and nominations for the national awards are recommended by EPA regions. A regulation establishes a framework for the annual recognition awards program at 40 CFR part 105. EPA announced the availability of application and nomination information for this year's awards (72 FR 26632, May 10, 2007). The awards program enhances national awareness of municipal wastewater treatment and encourages public support of programs targeted to protecting the public's health and safety and the nation's water quality. State water pollution control agencies and EPA regional offices make recommendations to headquarters for the national awards. Programs and projects being recognized are in compliance with applicable water quality requirements and have a satisfactory record with respect to environmental quality. Municipalities and industries are recognized for their demonstrated creativity and technological achievements in five awards categories as follows:

(1) Outstanding Operations and Maintenance practices at wastewater treatment facilities;

(2) Exemplary Biosolids Management projects, technology/innovation or development activities, research and public acceptance efforts;

(3) Pretreatment Program Excellence;

(4) Storm Water Management Excellence; and,

(5) Outstanding Combined Sewer Overflow Control programs.

The winners of the EPA's 2007 National Clean Water Act Recognition Awards are listed below by category.

**Category: Outstanding Operations and Maintenance Awards**

| First Place | Sub-category |
|---|---|
| Kent County Regional Wastewater Treatment Facility, Milford, Delaware | Large Advanced Plant. |
| Persigo Wastewater Treatment Facility, Grand Junction, Colorado | Large Secondary Treatment Plant. |
| Kalispell Advanced Wastewater Treatment and Biological Nutrient Removal Facility, Kalispell, Montana | Medium Advanced Plant. |
| Douglasville-Douglas County Water and Sewer Authority, South Central Urban Water Reuse Facility, Douglasville, Georgia. | Small Non-Discharging Plant. |
| Village of Trempealeau Wastewater Treatment Facility, Trempealeau, Wisconsin | Small Secondary Plant. |
| Southern Ute Indian Tribe Wastewater Treatment Plant, Ignacio, Colorado | Small Advanced Plant. |
| **Second Place** | **Sub-category** |
| Flat Creek Water Reclamation Facility, Gainesville, Georgia | Large Advanced Plant. |
| City of Groton, Connecticut Water Pollution Control Facility, Groton, Connecticut | Medium Advanced Plant. |
| Barona Band of Mission Indians, Lakeside, California | Small Advanced Plant. |

**Category: Exemplary Biosolids Management Awards**

| First Place | Sub-category |
|---|---|
| Ocean County Utilities Authority, Bayville, New Jersey | Greater than 5 dry tons per day. |
| City of Albany, Oregon, Albany, Oregon | Less than 5 dry tons per day. |
| University of Washington (Biosolids to Biodiesel), Seattle, Washington | Research and Innovation Activities. |
| Columbus Water Works, Atlanta, Georgia | Technology Development Activities. |
| **Second Place** | |
| Southside Wastewater Treatment Plant, Dallas, Texas | Greater than 5 dry tons per day. |

**Category: Outstanding Pretreatment Program Awards**

| First Place | Sub-category |
|---|---|
| Tri-Cities: Vandalia, Tipp City, Huber Heights, Ohio, Dayton, Ohio | 0–5 Significant Industrial Users (SIUs). |
| City of Longmont, Colorado, Longmont, Colorado | 6–20 SIUs. |
| Jacksonville Electric Authority, Jacksonville, Florida | 21 or more SIUs. |
| **Second Place** | |
| Big Dry Creek Wastewater Treatment Facility, Westminster, Colorado | 0–5 SIUs. |
| Persigo Wastewater Treatment Facility, Grand Junction, Colorado | 6–20 SIUs. |
| Austin Water Utility, Austin, Texas | 21 or more SIUs. |

**Category: Outstanding Storm Water Management Awards**

| First Place | Sub-category |
|---|---|
| City of Oakland Watershed Improvement Program, Oakland, California | Municipal Program. |
| Caltrans Stormwater Management Program, Sacramento, California | Municipal Program. |

Dated: October 4, 2007.

**Judy Davis,**

*Acting Director, Office of Wastewater Management.*

[FR Doc. E7–20373 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2007–0484; FRL–8482–8]**

## Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee Meeting—2007

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) National Center for Environmental Research (NCER) Standing Subcommittee.

**DATES:** The meeting (a teleconference call) will be held on Thursday, November 1, 2007 from 1 p.m. to 3 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the conference call will be accepted up to 1 business day before the meeting.

**ADDRESSES:** Participation in the meeting will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Susan Peterson, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0484, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee—2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC., Attention Docket ID No. EPA–HQ–ORD–2007–0484.

**Note:** this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0484. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee—2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at: Susan Peterson, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–1077; via fax at: (202) 565–2911; or via e-mail at: *peterson.susan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### General Information

Participation in the meeting will be by teleconference only—meeting rooms will not be used. Members of the public who wish to obtain the call-in number and access code to participate in the conference call may contact Susan Peterson, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above, by 4 working days prior to the conference call.

The purpose of the meeting is to discuss the subcommittee's input to their draft letter report and follow-up from their September 11, 2007 teleconference. Proposed agenda items for the conference call include, but are not limited to: Discussion of each of the three workgroups' recommendations, format of the draft letter report, and how it responds to the charge question to the subcommittee. The conference call is open to the public.

*Information on Services for Individuals with Disabilities:* For information on access or services for individuals with disabilities, please contact Susan Peterson at (202) 564–1077 or *peterson.susan@epa.gov*. To request accommodation of a disability, please contact Susan Peterson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 10, 2007.

**Mimi Dannel,**

*Acting Director, Office of Science Policy.*

[FR Doc. E7–20348 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

October 10, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 15, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *pra@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1078.

*Title:* Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 5,443,287.

*Estimated Time per Response:* 1–10 hours (average per response).

*Frequency of Response:* Recordkeeping requirement; On occasion reporting requirements; third party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 30,254,598 hours.

*Total Annual Cost:* $13,639,892.

*Nature and Extent of Confidentiality:* Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.''

*Privacy Act Impact Assessment:* Yes. The Privacy Impact Assessment was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

*Needs and Uses:* The reporting requirements included under this OMB Control Number 3060–1078 enables the Commission to collect information regarding violations of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act). This information is used to help wireless subscribers stop receiving unwanted commercial mobile services messages.

On August 12, 2004, the Commission released an *Order*, Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194, adopting rules to prohibit the sending of commercial messages to any address referencing an Internet domain name associated with wireless subscribers' messaging services, unless the individual addressee has given the sender express prior authorization.

The information collection requirements consist of 47 CFR 64.3100 (a)(4), (d), (e) and (f) of the Commission's rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–20341 Filed 10–15–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 071 0101]**

### Kyphon Inc., Disc-O-Tech Medical Technologies Ltd. (Under Voluntary Liquidation), and Discotech Orthopedic Technologies Inc.; Analysis of Agreement Containing Consent Orders to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before November 8, 2007.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to ''Kyphon Inc., File No. 071 0101,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).

16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at*http;//www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at*http://www.ftc.gov/ftc/privacy.htm*.

**FOR FURTHER INFORMATION CONTACT:** Jonathan S. Klarfeld (202) 326-3187, Bureau of Competition, Room NJ-5108, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 9, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/10/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

**Analysis of Agreement Containing Consent Order to Aid Public Comment**

**I. Introduction**

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Kyphon Inc. (''Kyphon'') and Disc-O-Tech Medical Technologies Ltd. (Under Voluntary Liquidation) and Discotech Orthopedic Technologies Inc. (collectively ''Disc-O-Tech''). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from Kyphon's acquisition of Disc-O-Tech's Confidence assets. Under the terms of the proposed Consent Agreement, Kyphon and Disc-O-Tech are required to divest all assets (including intellectual property) related to Disc-O-Tech's Confidence business to a third party, enabling that third party to manufacture and sell the Confidence cement and delivery system for the treatment of vertebral compression fractures.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw the proposed Consent Agreement or make it final.

On December 20, 2006, Kyphon agreed to acquire certain spine-related assets from Disc-O-Tech, including the intellectual property, sales agreements, and other assets relating to Disc-O-Tech's B-Twin, SKy Bone Expander, and Confidence product lines for approximately $220 million (the ''Acquisition''). The Commission's complaint alleges that the proposed acquisition of the assets related to the Confidence system, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial competitor from the U.S. market for minimally invasive vertebral compression fracture (''MIVCF'') treatment products. The proposed Consent Agreement would remedy the alleged violation by requiring a divestiture that will replace the competition that otherwise would be lost in this market as a result of the Acquisition.

**II. The Parties**

Kyphon develops and markets medical devices used to restore and preserve spinal function and diagnose the source of low back pain, including products used to treat vertebral compression fractures in a minimally invasive manner. In 2006, Kyphon reported worldwide sales of approximately $408 million, and U.S. sales of $324 million.

Disc-O-Tech, an Israeli corporation and its U.S. subsidiary that develops, manufactures, and sells products for minimally invasive orthopedic surgeries, introduced the Confidence system to the U.S. market in July 2006. Disc-O-Tech's global revenues were approximately $14 million in 2006.

**III. Minimally Invasive Vertebral Compression Fracture Treatments**

Vertebral compression fractures (''VCFs'') occur when one or more vertebral bodies collapse. Osteoporosis, a degenerative bone disease that largely affects elderly women, causes the vast majority of VCFs, but they can also be caused by cancerous tumors or traumatic injury. For some patients, VCFs cause extreme, persistent, and debilitating pain.

Doctors and their patients have few ways to effectively treat VCFs. In the past, physicians most commonly treated VCF patients with a variety of pain management techniques such as back braces, bed rest, and pain medication. For many patients, these techniques do not control the pain associated with VCFs and could lead to later health problems. Open surgery involving the placement of metal hardware is rarely performed to repair a VCF because the patients are typically elderly and not good candidates for successful procedures. MIVCF treatments were developed to provide doctors and their patients with a VCF treatment that is more effective than pain management and safer and more effective than open surgery.

Vertebroplasty, the first MIVCF treatment to be introduced, involves the injection of a fairly liquid polymethylmethacrylate bone cement into the fractured vertebral body under fluoroscopy image guidance. The bone

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

cement sets quickly, stabilizing the fracture and eliminating painful movement of loose bone in the vertebra. Vertebroplasty effectively relieves pain, but many doctors have safety concerns regarding the risk of the liquid bone cement leaking out of the vertebral body.

Kyphoplasty, introduced by Kyphon in 1999, is similar to vertebroplasty, except that the physician performs the additional step of inflating one or two balloons inside the vertebral body before injecting the bone cement. The principal advantage of kyphoplasty is that the inflation of the balloons creates a cavity into which the bone cement can flow, reducing the likelihood that cement will leak outside of the vertebral body. Kyphoplasty may have the additional benefit of helping to restore the vertebral body towards its pre-fracture shape and height. Because of its safety advantage and other perceived advantages, kyphoplasty is the most widely used MIVCF treatment product in the United States.

Because of the superiority of MIVCF treatment products over alternatives, the relevant product market in which to analyze the competitive effects of the Acquisition is no larger than MIVCF treatment products. The relevant geographic market is the United States. MIVCF treatment products are medical devices that are regulated by the United States Food and Drug Administration (''FDA''). MIVCF treatment products sold outside the United States, but not approved for sale in the United States, are not viable alternatives for U.S. consumers and hence are not in the relevant market.

Kyphon's premium-priced kyphoplasty product dominates the MIVCF treatment product market with more than a ninety percent share based on revenues. Disc-O-Tech's Confidence system is the first MIVCF treatment product that uses a highly viscous cement. Both Kyphon's product, which uses balloons, and Disc-O-Tech's product, which uses a highly viscous cement, have substantially lower risks of leakage from the vertebral body following injection than do the ''traditional'' vertebroplasty products offered by numerous other firms. All of the latter inject a low viscosity cement. As a result, Disc-O-Tech's Confidence system is poised to become a closer substitute for Kyphon's product than are the traditional vertebroplasty products. For this reason, traditional vertebroplasty products will not constrain the prices for Kyphon's product to the same extent that Disc-O-Tech's Confidence system would, absent its acquisition by Kyphon.

There are other competitors in the MIVCF treatment product market, including Medtronic and Spineology, but none provides the near-term competitive threat to Kyphon posed by Disc-O-Tech's offering. Medtronic has had limited success selling its Arcuate XP product to date, and its product appears to hold limited growth prospects. Spineology's MIVCF offering has been and appears likely to remain a niche product that competes primarily for younger VCF patients. Although several additional firms are attempting to enter the MIVCF treatment product market, the time line for commercialization of these products is significantly behind that of the Confidence system, and none appears to have the Confidence system's immediate prospects for success.

## IV. Competitive Effects and Entry Conditions

The Acquisition would cause significant competitive harm in the market for MIVCF treatment products. Confidence is Kyphon's principal competitive threat, and, but for the Acquisition, would make significant inroads into Kyphon's near-monopoly position. Because both products offer a safe method for treating VCFs, many physicians consider the Confidence system to be the best alternative to kyphoplasty, particularly for elderly osteoporotic patients who receive the vast majority of kyphoplasty treatments. By eliminating such a close competitor, the Acquisition would likely allow Kyphon to unilaterally raise prices in the MIVCF treatment market. The anticompetitive effects of the Acquisition are exacerbated by the fact that it appears to have been undertaken with the specific goal of precluding other major spine companies from acquiring Confidence and marketing it against kyphoplasty, which would have happened had Kyphon not acquired Confidence itself. By enabling Kyphon, rather than a major spine company, to control the further development and positioning of Confidence, Kyphon would be able to avoid the competition that it otherwise would have faced in the MIVCF treatment product market. As such, the Acquisition, if consummated, would have a significant, adverse effect on competition.

New entry is not likely to avert the anticompetitive effects of the proposed transaction. It likely would take more than two years for a would-be entrant to develop a product, conduct clinical trials, and submit the product for FDA approval. After submitting an application for FDA clearance or approval, a firm must wait for the FDA to review the material and respond to any questions the FDA may have. In addition to the development and regulatory time requirements for firms seeking to enter the MIVCF treatment product market, there are substantial intellectual property barriers an entrant must overcome. Patent litigation among competitors in this market is ongoing, and key patents act as a major obstacle to any prospective entrant. As such, any new MIVCF treatment device of any competitive significance would have to be designed around existing patents. Finally, even after a non-infringing design is developed and the product is manufactured, a firm would still need to establish a U.S. sales and marketing force. Considering all these factors, entry into the manufacture and sale of MIVCF treatment products is likely to take longer than two years. Thus, timely and sufficient entry in response to a small but significant price increase is extremely unlikely.

## V. The Proposed Consent Agreement

The parties have agreed, pursuant to the proposed Consent Agreement, to divest Disc-O-Tech's Confidence assets to a Commission-approved acquirer no later than 60 days after the Commission accepts the Consent Agreement for public comment, effectively remedying the Acquisition's anticompetitive effects in the MIVCF treatment product market. The Consent Agreement requires that the parties divest all assets relating to the Confidence system, including tangible property, intellectual property, and any permits and licenses that are necessary to manufacture, distribute, and sell the Confidence system. In addition, the parties must divest the rights to certain Disc-O-Tech development efforts related to the Confidence system. To the extent that an acquirer of the Confidence assets requires additional assets not included in the asset package, the Consent Agreement requires Kyphon to provide a license to any other assets it acquired from Disc-O-Tech, which will ensure that the acquirer will be able to immediately enter the MIVCF treatment product market and remain a viable competitor.

The proposed Consent Agreement contains several provisions to help ensure that the divestiture is successful. First, the Commission will evaluate possible purchasers of the divested assets to ensure that the competitive environment that would have existed but for the transaction is restored. If the parties do not divest the Confidence assets within the 60-day time period to a Commission-approved buyer, or if Kyphon closes on the acquisition of the

Confidence assets, the Consent Agreement provides for the Commission to appoint a trustee to divest the assets. Second, Disc-O-Tech is required to provide transitional services to the Commission-approved buyer. These transitional services, which are similar in form to what Disc-O-Tech would have provided to Kyphon, may be necessary for a smooth transition of the Confidence assets to the acquirer and to ensure continued and uninterrupted service to customers during the transition. The Consent Agreement also requires that Kyphon covenant not to sue the acquirer of the Confidence assets for infringing any intellectual property Kyphon acquired from Disc-O-Tech that is not being divested. This covenant covers not only the Confidence assets, but also extends to any developments an acquirer might make to the Confidence assets. This provision is designed as a safety net to ensure that Kyphon does not interfere with the acquirer's freedom to compete in the U.S. MIVCF treatment product market with a patent infringement lawsuit based on former Disc-O-Tech intellectual property. Finally, to ensure that the Commission will have an opportunity to review any attempt by Kyphon to acquire or license any of the Confidence assets at any time within the next two years, the proposed Consent Agreement contains a prior notice provision committing Kyphon to an H-S-R framework, even if such a transaction otherwise would be non-reportable.

The Order to Hold Separate and Maintain Assets that is included in the Consent Agreement requires that Disc-O-Tech maintain the viability of the Confidence business as a competitive operation until the business is transferred to a Commission-approved buyer. Specifically, Disc-O-Tech must maintain the confidentiality of sensitive business information, and take all actions required to prevent the destruction or wasting of the Confidence assets. Kyphon may not interfere with the Confidence business during the pendency of the divestiture by having any involvement in the Confidence business, making offers of employment to Disc-O-Tech employees involved in the Confidence business before the Confidence assets are divested, or interfering with Disc-O-Tech's suppliers of materials for the Confidence product.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission, with Commissioners Harbour and Kovacic recused.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E7–20325 Filed 10–15–07: 8:45 am]

**[Billing Code: 6750–01–S]**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Training Program for Regulatory Project Managers; Information Available to Industry

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) Center for Drug Evaluation and Research (CDER) is announcing the continuation of the Regulatory Project Management Site Tours and Regulatory Interaction Program (the Site Tours Program). The purpose of this document is to invite pharmaceutical companies interested in participating in this program to contact CDER.

**DATES:** Pharmaceutical companies may submit proposed agendas to the agency by December 17, 2007.

**ADDRESSES:** Submit written proposed agendas regarding the Site Tours Program to Beth Duvall-Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6466, Silver Spring, MD 20993–0002. You can also reach Beth Duvall-Miller by telephone at 301–796–0700 or by e-mail at *elizabeth.duvallmiller@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management staff. CDER seeks to enhance significantly review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing its training program to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide the following: (1) Firsthand exposure to industry's drug development processes and (2) a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

#### II. The Site Tours Program

In this program, over a 2- to 3-day period, small groups (five or less) of regulatory project managers, including a senior level regulatory project manager, can observe operations of pharmaceutical manufacturing and/or packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. Neither this tour nor any part of the program is intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but is meant rather to improve mutual understanding and to provide an avenue for open dialogue. During the Site Tours Program, regulatory project managers will also participate in daily workshops with their industry counterparts, focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, tracking mechanisms, and regulatory submission operations. The overall benefit to regulatory project managers will be exposure to project management, team techniques, and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

#### III. Site Selection

All travel expenses associated with the site tours will be the responsibility of CDER; therefore, selection will be based on the availability of funds and resources for each fiscal year. Firms interested in offering a site tour or learning more about this training opportunity should respond by (see **DATES**) by submitting a proposed agenda to Beth Duvall-Miller (see **ADDRESSES**).

Dated: October 9, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7–20430 Filed 10–15–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project**

The HRSA Uniform Progress Report (UPR) is used for the preparation and submission of continuation applications for Title VII and VIII health professions and nursing education and training programs. The UPR measures grantee success in meeting (1) the objectives of the grant project, and (2) the cross-cutting outcomes developed for the Bureau of Health Professions' education and training programs. Part I of the progress report is designed to collect information to determine whether sufficient progress has been made on the approved project objectives, as grantees must demonstrate satisfactory progress to warrant continuation of funding. Part II collects information on activities specific to a given program. Part III, the Comprehensive Performance Management System (CPMS), collects data on overall project performance related to the Bureau's strategic goals, objectives, outcomes, and indicators. Progress will be measured based on the objectives of the grant project, and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

The Bureau has simplified several tables in UPR II and added the ability for grantees to provide better race and ethnicity data. In addition, to respond to the requirements of GPRA, the Bureau has revised its cross-cutting goals, expected outcomes, and indicators in UPR III CPMS that provide the framework for collection of outcome data for its Title VII and VIII programs.

An outcome-based performance system is critical for measuring whether program support is meeting national health workforce objectives. At the core of the performance measurement system are found cross-cutting goals with respect to workforce quality, supply, diversity, and distribution of the health professions workforce.

The estimated annual burden is as follows:

| Report | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Uniform Progress Report | 1,500 | 1 | 1,500 | 7 | 10,500 |
| Total | 1,500 | | 1,500 | | 10,500 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: October 9, 2007.

**Alexandra Huttinger,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. E7–20383 Filed 10–15–07; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children (ACHDGDNC)

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Notice of ACHDGDNC Meeting to be held by Conference Call.

**SUMMARY:** The ACHDGDNC will be conducting a two hour conference call to hear a presentation from the ACHDGDNC's Evidence Review Workgroup and discuss the Committee's Report on long-term followup.

**DATES:** The conference call will be held on November 14, 2007, at 2 p.m. EST. Participants must dial: 1–877–922–9969 and enter the corresponding pass code 627445. For security reasons, the pass code 627445 is required to join the call. Participants should call no later than 1:50 p.m. EST in order for the logistics to be set up. Participants are asked to register for the conference by contacting Carrie Diener at (301) 443–1080 or e-mail *cdiener@hrsa.gov*. The registration deadline is November 12, 2007. The Department will try to accommodate those wishing to participate in the call. Any member of the public can submit written materials that will be distributed to Committee members prior to the conference call. Parties wishing to submit written comments should ensure that the comments are postmarked or emailed no later than November 12, 2007, for consideration. Comments should be submitted to Michele A. Lloyd-Puryear, Executive Secretary, ACHDGDNC, Maternal and Child Health Bureau, HRSA, Parklawn Building, Room 18A–19, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–1080; fax (301) 443–8604; or e-mail: *mpuryear@hrsa.gov*.

Members of the public can present oral comments during the conference call during the public comment period. If a member of the public wishes to speak, the Department should be notified at the time the participant registers. Other members of the public will be allocated time if time permits.

**FOR FURTHER INFORMATION CONTACT:** Michele A. Lloyd-Puryear, Executive Secretary, ACHDGDNC, Maternal and Child Health Bureau, HRSA, Parklawn Building, Room 18A–19, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–1080; fax (301) 443–8604; or e-mail: *mpuryear@hrsa.gov*.

**SUPPLEMENTARY INFORMATION:** The ACHDGDNC was chartered under Section 1111 of the Public Health Service (PHS) Act, 42 U.S.C. 300b–10, in February 2003 to advise the Secretary of the U.S. Department of Health and Human Services. The ACHDGDNC is directed to review and report regularly on newborn and childhood screening practices for heritable disorders, to

recommend improvements in the national newborn and childhood heritable screening programs, and to engage in the following activities:

(1) Provide advice and recommendations to the Secretary concerning grants and projects awarded or funded under its designated authorizing PHS Act;

(2) Provide technical information to the Secretary for the development of policies and priorities for the administration of grants under the designated PHS act; and

(3) Provide such recommendations, advice or information as may be necessary to enhance, expand or improve the ability of the Secretary to reduce the mortality or morbidity in newborns and children from heritable disorders.

The purpose of this call is to hear discussion from the ACHDGDNC members on the proposed review template from the ACHDGDNC's Evidence Workgroup and, if the ACHDGDNC chooses, to approve that template. In addition, the ACHDGDNC may choose to develop recommendations from the ACHDGDNC to the Secretary concerning the ACHDGDNC's evaluation and decisionmaking process and newborn screening long-term followup.

Dated: October 9, 2007.

**Alexandra Huttinger,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. E7–20387 Filed 10–15–07; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the President's Cancer Panel, October 22, 2007, 8 a.m. to October 22, 2007, 6:30 p.m., Hyatt Regency La Jolla, 3777 La Jolla Village Drive, San Diego, CA 92122 which was published in the **Federal Register** on September 26, 2007, 72 FR 54667.

This meeting is being amended to reschedule the closed session to Tuesday, October 30, 2007, 2 p.m.–4 p.m., as a telephone conference. The meeting is closed to the public.

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5093 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Cancer Institute Board of Scientific Advisors.

*Date:* November 15–16, 2007.

*Time:* November 15, 2007, 8 a.m. to 6 p.m.

*Agenda:* Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Time:* November 16, 2007, 8:30 a.m. to 1 p.m.

*Agenda:* Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Paulette S. Gray, PhD, Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, RM. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 10, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5095 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel; Conference Grant SEP.

*Date:* October 31, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room—1087, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Steven Birken, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 10th Fl., Bethesda, MD 20892, (301) 435–1078, *birkens@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel; C.O.B.R.E.—SEP.

*Date:* November 1, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Linda C. Duffy, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Dem. Blvd., 1 Dem, Plaza, Rm. 1082, MSC 4874, Bethesda, MD 20892–4874, 301–435–0810, *duffyl@mail.nih.gov.*

*Name of Committee:* National Center for Research Resources Special Emphasis Panel; Comparative Medicine SEP.

*Date:* November 7, 2007.

*Time:* 2:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy

Boulevard, Room—1087, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Steven Birken, PhD, Scientific Review Administrator, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Boulevard, One Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0815, *birkens@mail.nih.gov.*

*Name of Committee:* National Center for Research Resources Special Emphasis Panel; CM SEP 08'.

*Date:* November 19, 2007.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 1 Democracy Plaza, 6701 Democracy Blvd., 1087, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Steven Birken, PhD, Scientific Review Administrator, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Boulevard, One Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0815, *birkens@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5089 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Sickle Cell Disease Advisory Committee.

*Date:* October 29, 2007.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* Discussion of Programs and Issues.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Conference Room 9112/9116, Bethesda, MD 20892.

*Contact Person:* Robert B Moor, PhD, Health Scientist Administrator, Blood Diseases Program, Division of Blood Disease and Resources, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 10162, Bethesda, MD 20892, 301/435–0050.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 933.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5084 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; MBRS Support of Competitive Research.

*Date:* October 23–24, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Margaret J Weidman, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301 594–3663, *weidmanma@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5083 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Alzheimer Pathogenesis.

*Date:* October 24, 2007.

*Time:* 9 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

*Contact Person:* William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5086 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Pathway to Independence Award.

*Date:* October 30, 2007.

*Time:* 1:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Jose F. Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6101 Executive Blvd., Rm. 213, MSC 8401, Bethesda, MD 20892, 301–451–3086, *ruizjf@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5087 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Erectile Dysfunction and Endothelial Function.

*Date:* October 31, 2007.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrorinsonc@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes-Related Risk Factors Ancillary Study.

*Date:* November 9, 2007.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes, Endocrinology, and Metabolic Diseases.

*Date:* November 13, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *rw175w@nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Bariatric Surgery Ancillary Studies.

*Date:* November 14, 2007.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Place, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Paula A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895 *rushingp@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NAPS2 Continuation.

*Date:* November 15, 2007.

*Time:* 11 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Place, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Enzyme Assessment Core.

*Date:* November 15, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Place, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Hematopietic Stem Cells.

*Date:* November 19, 2007.

*Time:* 10 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20892.

*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator,

Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Study in the Genetics of Diabetes Type 2.

*Date:* November 19, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Place, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637 *davila-bloom@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5088 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; T Cell Regulation and Tolerance.

*Date:* November 6, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* North Bethesda Marriott, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Mercy R. Prabhudas, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp457@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5090 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; R13 Conference Review.

*Date:* October 31, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Ellen S. Buczko, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5091 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

*Date:* November 8–9, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* Carla T. Walls, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5092 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, ITMA/ITSP Conflicts.

*Date:* November 8, 2007.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892, 301–443–1959, *csarampo@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, NNTC AIDS.

*Date:* November 8, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, AIDS Training Review.

*Date:* November 13, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Megal Libbey, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville MD 20852, 301–402–6807, *libbeym@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 10, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5094 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

*Date:* November 7, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate and grant applications.

*Place:* Residence Inn Marriott, 7335 Wisconsin Ave., Bethesda, MD 20814,.

*Contact Person:* Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, National Research Service Award.

*Date:* November 8, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Marriott, 7335 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Brian R. Pike, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, (301) 594–3907, *pikbr@mail.nih.gov.*

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

*Date:* November 9, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate and grant applications.

*Place:* Residence Inn Marriott, 7335 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Physiology, and Biological Chemistry Research; A93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 10, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5096 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Training Grants in Digestive Diseases and Nutrition.

*Date:* November 8, 2007.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Obesity Nutrition Research Centers (P30).

*Date:* December 3, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

*Contact Person:* Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 10, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5097 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee, AIDS Research Review Committee (November 2007).

*Date:* November 28, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Erica L. Brown, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2639, *ebrown@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 10, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5098 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuropathic Pain.

*Date:* October 26, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Nanotechnology.

*Date:* October 29, 2007.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Crystal City, VA, Washington Reagan National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Joseph D. Mosca, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5158, MSC 7808, Bethesda, MD 20892, 301–435–2344, *moscajos@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; ZRG1 F09–W (20) Oncology Fellowship.

*Date:* October 29, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy suites Hotel Chevy Chase, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Lambratu Rahman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cancer Drug Development SBIR/STTR Panel.

*Date:* October 30–31, 2007.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Steven B. Scholnick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *scholnis@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts in Language, Communication and Cognition.

*Date:* October 30, 2007.

*Time:* 10:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; International Brain Disorders Review Group.

*Date:* October 31–November 1, 2007.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Del Coronado, 1500 Orange Avenue, San Diego, CA 92118.

*Contact Person:* Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5085 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Community Participation in Research PAR (R21).

*Date:* November 1–2, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

*Contact Person:* Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *krosnics@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Genes, Genomes and Genetics Specials.

*Date:* November 1–2, 2007.

*Time:* 8 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

*Contact Person:* Michael A. Marino, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Pathogenesis.

*Date:* November 1–2, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Alexandria Old Town Hotel, 1767 King Street, Alexandria, VA 22314.

*Contact Person:* Rolf Menzel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Pathways Linking Environments, Behaviors and HIV/AIDS.

*Date:* November 1–2, 2007.

*Time:* 8 a.m. to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hamilton Crowne Plaza Hotel, 14th and K Streets, NW., Washington, DC 20005.

*Contact Person:* Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1262, *chanetsaf@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Organ Systems.

*Date:* November 1, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Key Bridge, 1401 Lee Highway, Arlington, VA 22209.

*Contact Person:* Abdelouahab Aitouche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301–435–2365, *abdelouahaba@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Food Safety, non-HIV Infectious Agents Sterilization and Bioremediation.

*Date:* November 1–2, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9292, 301–435–1149, *elzaataf@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Risk Prevention and Health Behavior Across the Life Span.

*Date:* November 1–2, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Henley Park Hotel, 926 Massachusetts Avenue, NW., Washington, DC 20001.

*Contact Person:* Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Cell Biology.

*Date:* November 1–2, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jonathan Arias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–4206, *ariasj@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RIBT Member Conflicts.

*Date:* November 1, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–06–421: Pharmacogenetics of Fluoride (R21).

*Date:* November 1, 2007.

*Time:* 3 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301–435–1781, *th88q@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Visual Systems Small Business.

*Date:* November 2, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1000 29th Street/1111 30th Street NW., Washington, DC 20007.

*Contact Person:* George Ann Mckie, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846, Bethesda, MD 20892, 301–435–1049, *mckiegeo@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory, Motor and Cognitive Neuroscience.

*Date:* November 2, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Judith A. Finkelstein, PhD, Scientific Review Administrator, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Endocrinology, Nutritional Metabolism and Reproductive Science.

*Date:* November 2, 2007.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree Hotel, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Krish Krishnan, PhD, Scientific Review OFficer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Microbiology Fellowships.

*Date:* November 2, 2007.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Philadelphia Hotel, 1800 Market Street, Philadelphia, PA 19103.

*Contact Person:* John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institut5es of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Erythrocyte Biology.

*Date:* November 2, 2007.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Infectious Agent Detection and Diagnostics.

*Date:* November 5, 2007.

*Time:* 8 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Physiology and Pathobiology of Organ Systems.

*Date:* November 6, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Abdelouahab Aitouche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301–435–2365, *abdelouahaba@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Cell Biology SBIR/STTR Applications.

*Date:* November 6–7, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* David Balasundaram, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022 *balasundaramd@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Diversity Fellowships in Molecular Genetics.

*Date:* November 6-7, 2007.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Barbara J. Thomas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; LIRR and RIBT Member Conflicts.

*Date:* November 6, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.

*Date:* November 7, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NE., Tenleytown Ballroom, Washington, DC 20015.

*Contact Person:* Hilary D. Sigmon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Computational Biology and Software Development.

*Date:* November 7–8, 2007.

*Time:* 8 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Marc Rigas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, 301–402–1074, *rigasm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.

*Date:* November 7, 2007.

*Time:* 11 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Bonnie L. Burgess-Beusse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2191C, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; LCMI Member Conflicts.

*Date:* November 7, 2007.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call) .

*Contact Person:* Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Diversity Programs..

*Date:* November 7, 2007.

*Time:* 1:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call) .

*Contact Person:* Abdelouahab Aitouche, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301–435–2365, *abdelouahaba@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Psychopathology, Developmental Disabilities and Disorders of Aging.

*Date:* November 8–9, 2007.

*Time:* 7 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Gabriel B. Fosu, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, 301–435–3562, *fosug@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Community Participation in Research PAR (R01).

*Date:* November 8–9, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

*Contact Person:* Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–1712, *krosnics@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

*Date:* November 8, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin City Center Washington, DC., 1400 M Street, NW., Washington, DC 20005.

*Contact Person:* Mark P. Rubert, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biophysical and Biochemical Science.

*Date:* November 8, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Denise Beusen, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, 301–435–1267, *beusend@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Rehabilitation SBIR Review.

*Date:* November 8–9, 2007.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

*Contact Person:* Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Hematology Small Business (SBIR).

*Date:* November 8, 2007.

*Time:* 8 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

*Contact Person:* Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; EPR Spectroscopy Program Project.

*Date:* November 8–9, 2007.

*Time:* 8 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Nuria E. Assa-Munt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Health Literacy.

*Date:* November 8–9, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Washington, Pennsylvania Avenue at 15th Street, NW., Washington, DC 20004.

*Contact Person:* Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-infective Therapeutics.

*Date:* November 8, 2007.

*Time:* 8:30 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

*Contact Person:* Rossana Berti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, (301) 402–6411, *bertiros@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Diabetes, Obesity and Nutrition.

*Date:* November 8, 2007.

*Time:* 10 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Radiation Oncology and Therapy.

*Date:* November 8, 2007.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817) Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Atherosclerosis, Aging and Lipid Metabolism.

*Date:* November 8, 2007.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 435–1375, *ot3d@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Review of Electron Microscopy Program Project.

*Date:* November 8–10, 2007.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Ping Fan, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301435–1740, *fanp@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; HOP IRG Fellowship Meeting.

*Date:* November 8–9, 2007.

*Time:* 5 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1262, *chanetsaf@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Psychopathology, Developmental Disabilities, Stress and Aging Fellowship Study Section.

*Date:* November 9, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Estina E. Thompson, MPH, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–496–5749, *thompsone@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; DBBD Diversity Predoctoral Fellowship Review.

*Date:* November 9, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Paek-Gyu Lee, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, 301 402–7391, *leepg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biophysical and Physiological Neuroscience.

*Date:* November 9, 2007.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

*Contact Person:* Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, 301 435–1265, *langm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cancer Biomarkers and Cancer Genetics.

*Date:* November 9, 2007.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Angela Y. Ng, PhD, MBA, Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Platelet Biology.

*Date:* November 9, 2007.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Metabolism Reproduction.

*Date:* November 9, 2007.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 10, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5099 Filed 10–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2007–29095]**

### National Boating Safety Advisory Council

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meetings; schedule changes.

**SUMMARY:** On September 11, 2007, the United States Coast Guard published a notice in the **Federal Register** (72 FR 51828) announcing a meeting of the National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, prevention through people, and recreational boating safety strategic planning will meet to discuss issues relating to recreational boating safety. A scheduling conflict has required moving the Boats and Associated Equipment subcommittee meeting to the afternoon of Saturday, October 20, 2007 and the Prevention through People subcommittee meeting to the afternoon of Sunday, October 21, 2007.

**DATES:** NBSAC will meet on Saturday, October 20, 2007, from 8 a.m. to 12:30 p.m., and on Monday, October 22, 2007, from 8 a.m. to 3:30 p.m. The Boats and Associated Equipment Subcommittee will meet on Saturday, October 20, 2007, from 1:30 p.m. to 4:30 p.m. The Recreational Boating Safety Strategic Planning Subcommittee will meet on Sunday, October 21, 2007, from 8 a.m. to 12 p.m. The Prevention through People Subcommittee will meet on Sunday, October 21, 2007, from 1 p.m. to 4:30 p.m. These meetings may close early if all business is finished. On Sunday, October 21, 2007, a subcommittee meeting may start earlier if the preceding Subcommittee meeting closed early.

**ADDRESSES:** NBSAC will meet at the Residence Inn Arlington—Pentagon City, 550 Army Navy Drive, Arlington, VA 22202. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Ludwig, Executive Secretary of NBSAC, Commandant (CG–54221), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or the Office of Boating Safety's Web site at *http://www.uscgboating.org/nbsac/nbsac.htm.*

**FOR FURTHER INFORMATION CONTACT:** Jeff Ludwig, Executive Secretary of NBSAC, telephone 202–372–1061, fax 202–372–1932.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App.

**Tentative Agendas of Meetings**

*National Boating Safety Advisory Council (NBSAC)*

(1) Remarks—Mr. James P. Muldoon, NBSAC Chairman;

(2) Chief, Office of Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(3) Executive Secretary's report.

(4) Chairman's session.

(5) TSAC Liaison's report.

(6) NAVSAC Liaison's report.

(7) Coast Guard Auxiliary report.

(8) National Association of State Boating Law Administrators report.

(9) Report on upcoming national boating survey.

(10) Prevention Through People Subcommittee report.

(11) Boats and Associated Equipment Subcommittee report.

(12) Recreational Boating Safety Strategic Planning Subcommittee report.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Secretary of NBSAC as soon as possible.

Dated: October 4, 2007.

**Howard L. Hime,**

*Acting Director of Commercial Regulations and Standards, United States Coast Guard.*

[FR Doc. E7–20321 Filed 10–15–07; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 30-day notice and request for comments; Revision of a currently approved collection, OMB Number 1660–0021, FEMA Form 95–22.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

*Title:* National Fire Academy Executive Fire Officer Program Application Form.

*OMB Number:* 1660–0021.

*Abstract:* The Executive Fire Officer Program (EFOP) annually receives more applications from qualified applicants than there are program slots available. Additional information is required to objectively evaluate the applicant's writing capability, professional accomplishments, and analytical ability. This information along with supporting documentation are used to select the most qualified participants for the EFOP.

*Affected Public:* Individuals and households, and State, Local or Tribal Governments.

*Number of Respondents:* 400.

*Estimated Time per Respondent:* 1 Hour.

*Estimated Total Annual Burden Hours:* 800 Hours.

*Frequency of Response:* Annually.

*Comments:* Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before November 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: October 9, 2007.

**John A. Sharetts-Sullivan,**

*Director, Records Management Division, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E7–20343 Filed 10–15–07; 8:45 am]

**BILLING CODE 9110–17–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Proposed Information Collections Under the Paperwork Reduction Act; Comment Request

**AGENCY:** Bureau of Indian Education, Interior.

**ACTION:** Notice of Proposed Renewal Information Collection.

**SUMMARY:** The Bureau of Indian Education (BIE) is submitting the information collection, titled the BIE Higher Education Grant Program Annual Report Form, OMB Control Number 1076–0106, and the BIE Higher Education Grant Application Form, OMB Control Number 1076–0101 for approval. The Higher Education Annual Grant Report Form and the Higher Education Grant Application need to be renewed.

**DATES:** Submit comments on or before December 17, 2007.

**ADDRESSES:** Please send comments to Mr. Kevin Skenandore, Director, Bureau of Indian Education, Office of the Director, 1849 C Street, NW/MS–3609 MIB, Washington, DC 20240, facsimile number (202) 208–3312.

**FOR FURTHER INFORMATION CONTACT:** You may request further information or obtain copies of the information collection request submission from Keith Neves, Office of Planning, Bureau of Indian Education, 1849 C Street, NW., MS–3609/MIB, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The BIE Higher Education Grant Program Annual Report Form (OMB No. 1076–0106) provides a profile of program financial data from which we derive a national analysis of supplemental funding, unmet financial needs of eligible students and college graduation rates. Authority for the collection of information is contained in Pub. L. 93–638, The Indian Self-Determination and Education Assistance Act of 1975, as amended. The BIE Higher Education Grant Application (OMB No. 1076–0101) provides for an annual collection of information required to make a determination in the eligibility of funding for an applicant. The information collection is mandatory to be considered for a benefit.

*Request for Comments:* The Bureau of Indian Education requests you to send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology. Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the Bureau of Indian Education location listed in the **ADDRESSES** section, room 3609, during the hours of 8 a.m.–4 p.m., Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

*OMB Approval Number:* 1076–0106.

*Title:* BIE Higher Education Grant Program Annual Report Form.

*Brief Description of Collection:* Respondents who receive a grant are required to submit an annual report. Submission of an annual report is mandatory for receiving a benefit.

*Type of Review:* Renewal.

*Respondents:* Tribal higher education program directors.

*Number of Respondents:* 125.

*Estimated Time per Response:* 3 hours.

*Frequency of Response:* Annual.

*Total Annual Burden to Respondents:* 375 hours.

*OMB Approval Number:* 1076–0101.

*Title:* BIE Higher Education Grant Program Application.

*Brief Description of Collection:* Respondents receiving a benefit must annually complete the form to demonstrate unmet financial need for consideration of a grant.

*Type of Review:* Renewal.

*Respondents:* Students through the tribally controlled institutions of higher education. Submission of an annual application is required for consideration in receiving a benefit.

*Number of Respondents:* 14,000.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Annual.

*Total Annual Burden to Respondents:* 14,000 hours.

Dated: October 3, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E7–20283 Filed 10–15–07; 8:45 am]

**BILLING CODE 4310–6W–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–020–5101–ER–J217]**

### Notice of Intent To Prepare an Environmental Impact Statement To Analyze PacifiCorp's Mona to Oquirrh Double-Circuit 500/345 Kilovolt (kV) Transmission Line, UT–82829, and Amend the Pony Express Resource Management Plan for the Salt Lake Field Office, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** Pursuant to section 102(2) of the National Environmental Policy Act of 1969, 40 Code of Federal Regulations (CFR) subparts 1500–1508, and 43 CFR subpart 2800 (Right-of-Way), notice is hereby given that the Bureau of Land Management (BLM), Salt Lake Field Office (SLFO) and Fillmore Field Office (FFO) will be preparing an Environmental Impact Statement (EIS) to amend the Pony Express Resource Management Plan to consider a right-of-way application for the Mona to Oquirrh Double-Circuit 500/345 Kilovolt (kV) Transmission Line, located on public lands in Juab, Tooele, Utah and Salt Lake Counties, Utah. This notice initiates the public scoping period and announces public scoping meetings.

**DATES:** The public will be notified of scoping meetings through the local news media at least 15 days prior to the first meeting. It is anticipated at least five scoping meetings (Copperton, Tooele, Cedar Fort, Eureka and Nephi, Utah) will be held during this scoping period. The BLM will announce public scoping meetings to identify relevant issues through local newspapers, newsletters, and the PacifiCorp Web site: *http://www.pacificorp.com.* The project status, including meeting dates/times, will also be available on the BLM's Electronic Notification Bulletin Board (*https://www.ut.blm.gov/enbb/index.php*).

**ADDRESSES:** Written comments on the scope of the EIS should be post-marked or hand delivered to the BLM Salt Lake Field Office or Fillmore Field Office by 4:30 p.m., no later than 30 days after the date of publication of this notice in the **Federal Register** to ensure full consideration. Written scoping comments should be sent to BLM, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah 84119, ATTN: Mike Nelson; or Fillmore Field Office, 35 East 500 North, Fillmore, Utah 84631, ATTN: Clara Stevens. Comments may also be submitted in writing to the BLM at one of the scoping meetings or via e-mail at: *UT_M2OTL_EIS@blm.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Mike Nelson (Project Lead) Realty Specialist at the BLM Salt Lake Field Office, at (801) 977–4300; or Clara Stevens, Realty Specialist at the BLM Fillmore Field Office, at (435) 743–3100.

**SUPPLEMENTARY INFORMATION:** PacifiCorp proposes to establish a new double-circuit 500/345 kilovolt (kV) transmission line from the Mona Substation near Mona in Juab County, Utah to new expanded facilities at the existing Oquirrh Substation located in West Jordan and the Terminal Substation located in Salt Lake City, in Salt Lake County, Utah.

As part of long-range planning, this project will also include the identification of a right-of-way for a double-circuit 500/345kV line and the siting of two 500/345kV substations. Corridors, large enough to allow for a 1-mile separation between the proposed double-circuit 500/345kV line and the future double-circuit 500/345kV line would be considered.

The estimated lengths of the proposed transmission line route and future line would be determined through the environmental studies but could range from 60 to120 miles. A right-of-way of up to 250 feet in width and a right-of-way grant for 50 years would be required to construct, operate, and maintain the transmission line and structures. Specific acreages of access roads and temporary work areas would be determined through the environmental studies. The proposed project would take approximately eighteen months to construct, with an in-service date of June 2012. Once constructed, the project would be in operation year round transporting electrical power to the Wasatch Front.

The preliminary plan of development will be presented to the public during scoping meetings and newsletters mailed to interested parties. It will be available for public review at BLM's Salt Lake and Fillmore Field Offices and the EPG Web site. The BLM invites public comment on the scope of the analysis, including issues to consider and alternatives to the proposed action. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives—in addition to the proposed action, the BLM will explore and evaluate all reasonable alternatives, including the no action alternative, pursuant to Council on Environmental Quality (CEQ) regulations 1502.14(a) and 1502.14(d). The issues and alternatives will also guide the plan amendment process.

An interdisciplinary approach will be used to develop the EIS, in order to consider a variety of resource issues and concerns identified. The amendment to the governing land use plan would be based upon the following planning criteria:

- The amendment will be completed in compliance with FLPMA, NEPA and all other relevant Federal Law, Executive Orders and management policies of the BLM;
- Where existing planning decisions are still valid, those decisions may remain unchanged and be incorporated into the new amendment; and
- The amendment will recognize valid existing rights.

Potential significant direct, indirect, residual, and cumulative impacts from the proposed action and alternatives

will be analyzed. Important issues to be addressed in the EIS could include land uses, wildlife, transportation, visual resources and socioeconomics. Additional issues may be identified during the scoping process. BLM personnel will be present at the scoping meetings to explain the environmental review process, the right-of-way regulations, and other requirements for processing the proposed transmission line and the associated EIS. Representatives from PacifiCorp will also be available to describe their proposal.

Comments and information submitted on the EIS, including names, e-mail addresses, and street addresses of respondents, will be available for public review and disclosure at the above address. The BLM will not accept anonymous comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Formal scoping comments must be submitted within 30 days after the last public meeting. Comments received and a list of attendees for each scoping meeting will be made available for public inspection and open for 30 days following each meeting for any participant(s) who wish to clarify their views. Comments and documents pertinent to this proposal, including names and street addresses of respondents, may be examined at the Salt Lake or Fillmore Field Offices during regular business hours (7:30 a.m.–4:30 p.m. Monday through Friday, except holidays). Comments may be published as part of the EIS.

Federal, State, and local agencies, as well as individuals or organizations that may be interested in or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Dated: October 9, 2007.

**Selma Sierra,**

*Utah State Director.*

[FR Doc. E7–20426 Filed 10–15–07; 8:45 am]

**BILLING CODE 5101–$$–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[(NM–921–1301–FI–08); (OKNM 113435)]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 113435

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the Class II provisions of Title IV, Public Law 97–451, and 43 CFR 3108.2–3, the Bureau of Land Management (BLM) received a petition for reinstatement of Competitive oil and gas lease OKNM 113435 from the lessee, Greenwood Energy, Inc., for lands in Woods County, Oklahoma. The petition was filed on time and it was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bernadine T. Martinez, BLM, New Mexico State Office, at (505) 438–7530.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing the reinstate lease OKNM 113435, effective the date of termination, March 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 15, 2007.

**Bernadine T. Martinez,**

*Land Law Examiner.*

[FR Doc. 07–5075 Filed 11–15–07; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**(NV–056–5853–ES; N–80113–01; 7–08807)**

### Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes in Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** Recreation and Public Purposes (R&PP) Act request for lease and subsequent conveyance of approximately 41.48 acres of public land in Clark County, Nevada. The City of North Las Vegas proposes to use the land for a public park and a police substation.

**DATES:** Interested parties may submit written comments regarding the proposed lease/conveyance of the lands until November 30, 2007.

**ADDRESSES:** Mail written comments to BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301.

**FOR FURTHER INFORMATION CONTACT:** Frederick Marcell, (702) 515–5164.

**SUPPLEMENTARY INFORMATION:** The following described public lands in North Las Vegas, Clark County, Nevada have been examined and found suitable for lease and subsequent conveyance under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). The City of North Las Vegas proposes to use 41.48 acres of land for a public park and a police substation. The park amenities will include indoor/outdoor swimming pools, multi-generational center, gymnasiums, dance/aerobics rooms, dog park, parking areas, baseball fields, basketball court, playground areas, walking trails, and barbeque areas. The park and police substation facility will serve citizens in the northeast sector of North Las Vegas where rapid growth has occurred. The parcel of land is located north of Centennial Parkway and south of Rome Boulevard, and is legally described as:

**Mount Diablo Meridian, Nevada,**

T. 19 S., R. 61 E.,
Section 24, lot 12.
The area described contains 41.48 acres, more or less.

The land is not required for any federal purpose. The proposed action is in conformance with the Las Vegas Resource Management Plan approved on October 5, 1998, and would be in the public interest. The Plan of Development has been reviewed and it has been determined the proposed

action is in conformance with the land use plan decision, LD–1, established in accordance with section 202 of the Federal Land Policy and Management Act, as amended (43 U.S.C. 1712). The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals under applicable laws and such regulations as the Secretary of the Interior may prescribe, including all necessary access and exit rights.

The lease/conveyance for N–80113–01 will be subject to:

1. Valid existing rights;

2. A right-of-way for underground distribution line purposes granted to Nevada Power Company, its successors or assigns, by right-of-way N–80612, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

3. A right-of-way for underground distribution line purposes granted to Nevada Power Company, its successors or assigns, by right-of-way N–81066, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

4. A right-of-way for temporary use purposes granted to Nevada Power Company, its successors or assigns, by right-of-way N–81066–01, pursuant to the Act of October 21, 1976, 090 Stat. 2778, 43 U.S.C. 1764; and expires December 30, 2007;

5. A right-of-way for telephone line purposes granted to Central Telephone Company, its successors or assigns, by right-of-way N–81442, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

6. A right-of-way for natural gas pipeline purposes granted to Southwest Gas Corporation, its successors or assigns, by right-of-way N–82820, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185 Sec. 28.

Upon publication of this notice in the **Federal Register**, the public lands described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws. Detailed information concerning this action is available for review at the Bureau of Land Management, Las Vegas Field Office at the address listed above.

Interested parties may submit comments regarding the specific use proposed in the application and Plan of Development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for a public park site and police substation. Any adverse comments will be reviewed by the BLM Nevada State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Only written comments submitted by postal service or overnight mail to the Field Manager BLM Las Vegas Field Office will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed. Documents related to this action are on file at the BLM Las Vegas Field Office at the address above and may be reviewed by the public at their request.

In the absence of any adverse comments, the decision will become effective on December 17, 2007. The lands will not be available for lease/conveyance until after the decision becomes effective.

(Authority: 43 CFR 2741.5)

Dated: October 3, 2007.

**Mark R. Chatterton,**

*Assistant Field Manager, Division of Non-Renewable Resources.*

[FR Doc. 07–5076 Filed 10–15–07; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–050–5853–ES; N–75562; 8–08807]**

### Notice of Realty Action: Recreation and Public Purposes Act Classification of Public Lands in Clark County, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 28.75 acres of public land in Clark County, Nevada. The City of Las Vegas (City) proposes to use the land as a public park.

**DATES:** Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands until November 30, 2007.

**ADDRESSES:** Send written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301.

**FOR FURTHER INFORMATION CONTACT:** Kim Liebhauser, Supervisory Realty Specialist, Las Vegas Field Office, (702) 515–5088.

**SUPPLEMENTARY INFORMATION:** The following described public lands in Las Vegas, Clark County, Nevada have been examined and found suitable for classification for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*).

The City of Las Vegas proposes to use the 28.75 acres of land for a public park. The park amenities will include lacrosse fields, a tot play area, shade pavilions, restrooms, landscaping and parking. The park will serve citizens in the northwest sector of the City, where rapid growth has occurred. The parcel of public land is generally located west of Durango Drive, between Centennial Parkway and Tropical Parkway, and is legally described as:

**Mount Diablo Meridian, Nevada**

T. 19 S., R. 60 E.,
Section 29, E½SW¼NW¼NE¼,
N½SW¼NE¼,
S½NE¼NW¼SE¼NE¼,
NW¼NW¼SE¼NE¼.

The area described contains 28.75 acres, more or less.

The land is not required for any federal purpose. The proposed action is in conformance with the Las Vegas Resource Management Plan approved on October 5, 1998, and would be in the public interest. The Plan of Development has been reviewed and it is determined the proposed action conforms with land use plan decision, LD–1, established in accordance with section 202 of FLPMA, as amended (43 U.S.C. 1712). The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the

following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the lands under applicable law and such regulations as the Secretary of the Interior may prescribe, including all necessary access and exit rights.

The lease/conveyance for N–75562 will also be subject to:

1. Valid existing rights;

2. Right-of-Way N–52442 for underground 15KV distribution line and telephone line purposes granted to Nevada Power Company, its successors or assigns, and Central Telephone Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

3. Right-of-Way N–52442–01 for Temporary Use Permit purposes granted to Nevada Power Company, its successors or assigns, and Central Telephone Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1764);

4. Right-of-Way N–59832 for roadway purposes granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

5. Right-of-Way N–78337 for underground electrical distribution line purposes granted to Nevada Power Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

6. Right-of-Way N–82735 for 15KV underground distribution line purposes granted to Nevada Power Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

7. Right-of-Way N–82735–01 for Temporary Use Permit purposes granted to Nevada Power Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1764).

On October 16, 2007, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws. Classification comments may be submitted involving the suitability of the land for a public park. Comments on the classification are restricted to whether the lands are physically suited for the proposal, whether the use will maximize the future use of uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. The classification of the land described in this Notice will become effective December 17, 2007.

The lands will not be offered for lease/conveyance until after the classification becomes effective.

Interested parties may submit comments regarding the specific use proposed in the application and Plan of Development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for a public park.

Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered properly filed. Documents related to this action are on file at the BLM Las Vegas Field Office at the address above and may be reviewed by the public at their request.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments will be reviewed by the BLM Nevada State Director who may sustain, vacate, or modify this realty action in whole or in part.

The decision will become effective on December 17, 2007. The lands will not be available for lease/conveyance until after the decision becomes effective.

(Authority: 43 CFR 2741.5)

Dated: October 4, 2007.

**Philip Rhinehart,**

*Supervisory Realty Specialist, Acting Assistant Field Manager, Las Vegas Field Office.*

[FR Doc. 07–5077 Filed 10–15–07; 8:45 am]

**BILLING CODE 4310–HC–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–050–5853–ES; N–82353; 8–08807]**

### Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes of Public Lands in Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** Recreation and Public Purposes (R&PP) Act request for lease and subsequent conveyance of approximately 2.5 acres of public land in Clark County, Nevada. The City of Las Vegas (City) proposes to use the land as a fire station.

**DATES:** Interested parties may submit comments regarding the proposed lease/conveyance of the lands until November 30, 2007.

**ADDRESSES:** Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301.

**FOR FURTHER INFORMATION CONTACT:** Kim Liebhauser, Supervisory Realty Specialist, Las Vegas Field Office, (702) 515–5088.

**SUPPLEMENTARY INFORMATION:** The following described public lands in Las Vegas, Clark County, Nevada have been examined and found suitable for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use 2.5 acres of land for a fire station. The fire station amenities will include fire personnel living quarters, kitchen facilities, office and conference rooms, street grading and paving as well as signage and traffic signal construction, a dumpsite enclosure, landscaping and a parking lot. This fire station will serve citizens in the northwest sector of the City, where rapid growth has occurred. The parcel of public land is generally located east of Fort Apache Road and north of Log Cabin Way, and can be described as:

**Mount Diablo Meridian, Nevada,**

T. 19 S., R. 60 E.,

Section 5, a portion of Government Lot 18, more particularly described as the NW¼ of Government Lot 18.

The area described contains 2.55 acres, more or less.

**Note:** This description will be replaced by a lot designation upon final approval of the official plat of survey.

The land is not required for any federal purpose. The proposed action is

in conformance with the Las Vegas Resource Management Plan approved on October 5, 1998, and would be in the public interest. The Plan of Development has been reviewed and it is determined the proposed action conforms with land use plan decision, LD–1, established in accordance with Section 202 of the Federal Land Policy and Management Act, as amended (43 U.S.C. 1712). The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the lands under applicable law and such regulations as the Secretary of the Interior may prescribe, including all necessary access and exit rights.

The lease/conveyance for N–82353 will be subject to valid existing rights.

On October 16, 2007, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Detailed information concerning this station is available for review as the BLM Las Vegas Field Office at the address listed above.

Interested parties may submit comments regarding the specific use proposed in the application and Plan of Development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, to any other factor not yet directly related to the suitability of the land for a fire station. Any adverse comments will be reviewed by the BLM Nevada State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered properly filed. Documents related to this action are on file at the BLM Las Vegas Field Office at the address above and may be reviewed by the public at their request.

In the absence of any adverse comments, the decision will become effective on December 17, 2007. The lands will not be available for lease/conveyance until after the decision becomes effective.

(Authority: 43 CFR 2741.5)

Dated: October 4, 2007.

**Philip Rhinehart,**

*Supervisory Realty Specialist, Acting Assistant Field Manager, Las Vegas Field Office.*

[FR Doc. 07–5078 Filed 10–15–07; 8:45 am]

**BILLING CODE 4310–HC–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–952–08–1420–BJ]**

### Filing of Plats of Survey; Nevada

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

**DATES:** *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

**FOR FURTHER INFORMATION CONTACT:** David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

**SUPPLEMENTARY INFORMATION:** 1. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on August 7, 2007.

The plat, in five sheets, representing the dependent resurvey of portions of the south and east boundaries and a portion of the subdivisional lines, and the subdivision of certain sections, Township 17 South, Range 50 East, Mount Diablo Meridian, Nevada, executed under Group No. 832, was accepted August 2, 2007.

The plat representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the subdivision of sections 31 and 32, Township 17 South, Range 51 East, Mount Diablo Meridian, Nevada, executed under Group No. 832, was accepted August 2, 2007.

These surveys were executed to meet certain administrative needs of the Fish and Wildlife Service.

2. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on August 24, 2007.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision-of-section lines of section 25, the subdivision of sections 14 and 24 and the further subdivision of section 25, Township 11 North, Range 20 East, Mount Diablo Meridian, Nevada, executed under Group No. 816, was accepted August 23, 2007.

The plat, in three sheets, representing the dependent resurvey of the Second Standard Parallel North, through portions of Ranges 21 and 22 East, a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of certain sections, Township 10 North, Range 22 East, Mount Diablo Meridian, Nevada, executed under Group No. 816, was accepted August 23, 2007.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on August 30, 2007.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and a portion of the subdivision-of-section lines of sections 6 and 8, the subdivision of sections 7, 16, 17 and 18, the further subdivision of sections 5, 6, 8 and 9, and metes-and-bounds surveys in sections 6, 7 and 18, Township 12 North, Range 29 East, Mount Diablo Meridian, Nevada, executed under Group No. 827, was accepted August 28, 2007. This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

4. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: October 3, 2007.

**David D. Morlan,**

*Chief Cadastral Surveyor, Nevada.*

[FR Doc. E7–20292 Filed 10–15–07; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF LABOR

### Veterans' Employment and Training Service

Office of the Assistant Secretary for Veterans' Employment and Training; the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app.II). The ACVETEO's authority is codified in Title 38 U.S. Code, Section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the Department of Labor met these needs; and assisting in carrying out outreach to employers seeking to hire veterans.

The Advisory Committee on Veterans' Employment Training and Employer Outreach will meet on Thursday, November 15th from 8 a.m. to 4 p.m. at the OSI Restaurant Partners, LLC, 2202 N. Westshore Boulevard, Corporate Center One Building, 5th Floor, Tampa, Florida 33607.

The committee will discuss programs assisting veterans seeking employment and raising employer awareness as to the advantages of hiring veterans. Individuals needing special accommodations should notify Bill Offutt at (202) 693–4717 by November 9th, 2007.

Signed in Washington, DC, this 10th day of October 2007.

**John M. McWilliam,**

*Deputy Assistant Secretary, Veterans' Employment and Training.*

[FR Doc. E7–20337 Filed 10–15–07; 8:45 am]

**BILLING CODE 4510–79–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Polar Programs (1130).

*Date/Time:* November 8, 2007, 8 a.m. to 5 p.m. November 9, 2007, 8 a.m. to 3 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Stafford II–11th Floor.

*Type of Meeting:* Open.

*Contact Person:* Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs, and activities on the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

*Agenda:* Staff presentations and discussion on opportunities and challenges for polar research, education and infrastructure; reports and recommendations from the Arctic and Antarctic Committees of Visitors; and overall dimensions of NSF's IPY activity and how it relates to IPY activity worldwide.

Dated: October 11, 2007.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E7–20323 Filed 10–15–07; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–317 and 50–318]**

### Calvert Cliffs Nuclear Power Plant, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Calvert Cliffs Nuclear Power Plant, Inc. (the licensee) to withdraw its application dated January 31, 2005, for proposed amendments to Renewed Facility Operating License Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, respectively, located in Calvert County, Maryland.

The proposed amendment would have revised the Renewed Facility Operating Licenses and Technical Specifications to increase the licensed core power by 1.37 percent to 2737 MegaWatt-thermal through implementation of certain feedwater flow measurement instrumentation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 16, 2005 (70 FR 12906). However, by letter dated September 27, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 31, 2005, and the licensee's letter dated September 27, 2007, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of October 2007.

For the Nuclear Regulatory Commission.

**Douglas V. Pickett,**

*Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E7–20417 Filed 10–15–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–143–CO, ASLBP No. 07–857–01–CO]**

### Nuclear Fuel Services (Confirmatory Order); Notice of Reconstitution

Pursuant to 10 CFR 2.321, the Atomic Safety and Licensing Board in the above captioned *Nuclear Fuel Services* proceeding is hereby reconstituted by appointing Administrative Judge G. Paul Bollwerk in place of Administrative Judge Peter Lam, whose retirement from the Panel has rendered him unavailable to participate in this proceeding (10 CFR 2.313(c)).

In accordance with 10 CFR 2.302, henceforth all correspondence, documents, and other material relating to any matter in this proceeding over which this Licensing Board has

jurisdiction should be served on Administrative Judge Bollwerk as follows: Administrative Judge G. Paul Bollwerk, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated: Issued at Rockville, Maryland, this 9th day of October 2007.

**E. Roy Hawkens,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. E7–20415 Filed 10–15–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. IA–05–021–EA; ASLBP No. 05–839–02–EA]**

### Andrew Siemaszko (Enforcement Action); Notice of Reconstitution

Pursuant to 10 CFR 2.321, the Atomic Safety and Licensing Board in the above captioned *Andrew Siemaszko* proceeding is hereby reconstituted by appointing Administrative Judge Nicholas Trikouris in place of Administrative Judge Peter Lam, whose retirement from the Panel has rendered him unavailable to participate in this proceeding (10 CFR 2.313(c)).

In accordance with 10 CFR 2.302, henceforth all correspondence, documents, and other material relating to any matter in this proceeding over which this Licensing Board has jurisdiction should be served on Administrative Judge Trikouris as follows: Administrative Judge Nicholas G. Trikouris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland this 9th day of October 2007.

**E. Roy Hawkens,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. E7–20419 Filed 10–15–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 31, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Wednesday, October 31, 2007, 2:30 p.m. Until the Conclusion of Business**

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 10, 2007.

**Cayetano Santos,**

*Chief, Reactor Safety Branch.*

[FR Doc. E7–20416 Filed 10–15–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Subcommittee on AP1000; Notice of Meeting

The ACRS Subcommittee on AP1000 will hold a meeting on October 31, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, October 31, 2007—8 a.m. Until the Conclusion of Business*

The Subcommittee will meet with representatives of the NRC Staff, Westinghouse Electric Corporation (*W*), and the AP1000 Design Centered Working Group (DCWG) to discuss the AP1000 design, proposed revisions to 10 CFR Part 52 Appendix D, issues to be resolved collectively for Combined License (COL) applicants referencing the AP1000 certified design by the AP1000 DCWG, and issues that will be resolved on a plant-specific basis by COL applicants. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, *W*, the AP1000 DCWG, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, David C. Fischer (telephone 301/415–6889) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:15 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: *October 10, 2007.*

**Cayetano Santos,**

*Chief, Reactor Safety Branch.*

[FR Doc. E7–20432 Filed 10–15–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**DATES:** Weeks of October 15, 22, 29, November 5, 12, 19, 2007.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of October 15, 2007**

There are no meetings scheduled for the Week of October 15, 2007.

**Week of October 22, 2007—Tentative**

*Wednesday, October 24, 2007—*

9:25 a.m. Affirmation Session (Public Meeting) (Tentative)

a. Final Rule—Clarification Of NRC Civil Penalty Authority Over Contractors And Subcontractors Who Discriminate Against Employees For Engaging In Protected Activities (RIN 3150–AH49) (Tentative)

b. Pa'ina Hawaii, LLC (Material License Application) (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9:30 a.m. Periodic Briefing on New Reactor Issues, Part 1 (Public Meeting) (Contact: Roger Rihm, 301–415–7807)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Periodic Briefing on New Reactor Issues, Part 2 (Public Meeting) (Contact: Roger Rihm, 301–415–7807)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of October 29, 2007—Tentative**

There are no meetings scheduled for the Week of October 29, 2007.

**Week of November 5, 2007—Tentative**

There are no meetings scheduled for the Week of November 5, 2007.

**Week of November 12, 2007—Tentative**

*Wednesday, November 14, 2007*

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste and Materials (ACNW&M) (Public Meeting) (Contact: Antonio Dias, 301 415–6805)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of November 19, 2007—Tentative**

There are no meetings scheduled for the Week of November 19, 2007.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 11, 2007.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 07–5119 Filed 10–12–07; 12:27 pm]

**BILLING CODE 7590–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Request for Public Comments on the Review and Renegotiation of the United States-Israel Agreement on Trade in Agricultural Products

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Trade Policy Staff Committee (TPSC) is soliciting written comments on U.S. objectives for upcoming negotiations on the renewal of the United States-Israel Agreement on Trade in Agricultural Products (ATAP). Specifically, the TPSC is seeking comments on general negotiating objectives and product-specific requests.

**DATES:** Public comments are due by Noon, Wednesday, November 14, 2007.

**ADDRESSES:** Submissions by electronic mail should be submitted to *FR0802ustr.eop.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508 (202) 395–3475. All other questions regarding the negotiations should be addressed to Andrew Stephens, Director for Bilateral Agricultural Affairs, Office of the USTR, (202) 395–9637.

**SUPPLEMENTARY INFORMATION:** The 1985 Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America (Israel FTA) was intended to apply, in full, to trade in all products between the two countries. However, the United States and Israel held differing interpretations as to the meaning of certain rights and obligations related to agricultural products under the Israel FTA. In the interest of achieving practical improvements in agricultural trade between the two countries, the United States and Israel in 1996 signed the Agreement on Trade in Agricultural Products (ATAP). The 1996 ATAP was an adjunct to the Israel FTA. The agreement expired and then was subsequently renewed in 2004 for a period ending on December 31, 2008.

According to the ATAP, U.S. agricultural products exported to Israel are divided into three categories: (1) Products which are exempt from tariffs, (2) products which are exempt from tariffs within certain quantities (tariff-rate quotas), and (3) products which are imported at a preferential tariff rate. Following the implementation of the 1985 Israel FTA, most Israeli agricultural products exported to the United States had duty-free access to the U.S. market. However, certain Israeli products remained subject to tariff-rate quotas. Therefore, duty-free quota allocations, in excess of U.S. WTO commitments, are the principle concessions granted to Israeli products as a result of the ATAP.

The United States and Israel have committed to initiate a review of the operation of the ATAP and to seek further improvements. In preparation, USTR is soliciting detailed written comments, including data and arguments, addressing:

(a) General and product-specific negotiating objectives for the ATAP;

(b) Economic costs and benefits to U.S. producers and exporters related to the reduction or removal of current restrictions to the Israeli agricultural market;

(c) Product-specific export interests or barriers (described by Harmonized Tariff System numbers);

(d) Detailed accounts of particular trade-restrictive measures that should be addressed in the negotiations; and,

(e) Other relevant issues, including potential environmental implications of the proposed agreement.

**Written Comments**

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event than an e-mail submission is impossible, submissions should be made by facsimile.

Interested persons may submit written comments by Noon, Wednesday, November 14, 2007. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers).

Persons making submissions by e-mail should use the following subject line: ''United States-Israel ATAP Written Comments.'' Documents should be submitted as Adobe PDF, MSWord files or Word Perfect. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC–'' and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information submitted in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''Business Confidential'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

**Carmen Suro-Bredie,**

*Chair, Trade Policy Staff Committee.*

[FR Doc. E7–20374 Filed 10–15–07; 8:45 am]

**BILLING CODE 3190–W8–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56629; File No. SR–Amex–2007–87]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Section 107 of the Amex Company Guide To Provide an Exception to the Initial Minimum Public Distribution Listing Requirement

October 9, 2007.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 9, 2007, American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which items have been prepared by the Exchange. On October 4, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is granting accelerated approval to the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 107A, 107C, 107D, 107E, and 107F of the Amex *Company Guide* (''Company Guide'') to provide an exception to the initial minimum public distribution listing requirement of one million trading units for certain equity linked term notes (''Equity-Linked Notes''), index-linked exchangeable notes (''Index-Linked Exchangeable Notes''), index-linked securities (''Index-Linked Securities''), commodity-linked securities (''Commodity-Linked Securities''), and currency-linked securities (''Currency-Linked Securities'') (collectively, ''Section 107 Securities'').

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.amex.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange states that the purpose of this proposal is to permit the listing of certain Section 107 Securities even though the minimum public distribution requirement of one million trading units has not been met at the time of listing. This exception would be conditioned on whether the particular issue provides for the redemption of securities at the option of the holders on at least a weekly basis. In addition, the Exchange proposes to revise the text of the ''General Criteria'' in each of Sections 107C(a), 107D(a), 107E(a) and 107F(a) to eliminate repetitive rule text that is incorporated by reference to Section 107A of the Company Guide.

Pursuant to Section 107 of the Amex Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants.[4] The general listing criteria relating to issuers and the issuance are set forth in Section 107A of the Company Guide. The Exchange in connection with a potential listing of Section 107 Securities evaluates each security against the following criteria in Section 107A: (1) A market value of at least $4 million; and (2) a minimum

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR–Amex–89–29).

public distribution requirement of one million trading units with a minimum of 400 public shareholders. Two exceptions to these initial listing requirements exist. First, the minimum public distribution requirement is not applicable to an issue traded in thousand dollar denominations. Second, the minimum public shareholder requirement does not apply to securities redeemable at the option of the holder on at least a weekly basis.

The listing criteria also provides that the issuer must have assets in excess of $100 million and stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

The Exchange over the past several years added several different generic listing standards in Section 107 for Equity Linked Notes, Index-Linked Exchangeable Notes, Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, and trust certificate securities. These requirements are set forth in Sections 107B,[5] 107C,[6] 107D,[7] 107E,[8] 107F,[9] and 107G[10] of the Company Guide, respectively. In each case, an initial minimum public distribution of at least one million trading units is required, except where a security is traded in thousand dollar denominations. The Exchange submits that an exception to the minimum public distribution requirement of one million trading units is necessary for the successful listing of Section 107 Securities that provide for redemption at the option of the holders on at least a weekly basis.

Sections 107A(b), 107B(a), 107C(a), 107D(a), 107E(a) and 107F(a) currently provide an exception to new listings of Section 107 Securities from the otherwise applicable requirement that the issue have 400 public shareholders upon listing, but only if the issue provides for the redemption of securities at the option of the holders on at least at weekly basis.[11] The Exchange believes that, where there is a weekly redemption right, the same justification exists for an exception from the minimum public distribution requirement to have one million units issued at the time of listing.

The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of Section 107 Securities and the performance of the underlying asset, such as a single security, basket of securities and/or securities index, as holders will be unlikely to sell their securities for less than their redemption value if they have a weekly right to be redeemed for their full value. In addition, in the case of certain Section 107 Securities with a weekly redemption feature, the issuer may have the ability to issue new securities from time to time at market prices prevailing at the time of sale, at prices related to market prices or at negotiated prices. This provides a ready supply of new securities, thereby reducing the potential that Section 107 Security market prices will be affected by a scarcity of available securities. In addition, the ability to issue new securities may assist in maintaining a strong correlation between the market price and indicative value of such securities during the trading day, as investors will unlikely be willing to pay more than the indicative value in the open market if they can acquire the securities from the issuer at such price. The Exchange states that this is based largely on potential arbitrage opportunities that should mitigate the effect of any price differentials.

The Exchange believes that the ability to list Section 107 Securities with these characteristics without an initial minimum holder and initial minimum public distribution requirement is important to the successful listing of such securities. Issuers issuing these types of Section 107 Securities generally do not intend to do so by way of an underwritten offering, but instead, initially distribute the securities similar to the manner in which exchange-traded funds, or ''ETFs,'' are brought to market. In the case of an ETF, shares are initially launched or distributed without a significant distribution event with the share float increasing over time as securities in creation unit size are issued from the issuer at net asset value (''NAV''). Because of market dynamics and the purchasing behavior of investors, it is difficult for an issuer to be able to guarantee a specific number of units on the date of listing in order to meet the initial minimum one million trading unit requirement. However, the Exchange believes that this difficulty in ensuring the sale of one million units on the listing date is not indicative of a likely long-term lack of liquidity in the securities or, for the reasons set forth in the prior paragraph, of a difficulty in establishing a pricing equilibrium in the securities or a successful two-sided market.

Accordingly, the Exchange submits that the existence of a weekly redemption option justifies this limited exception to the minimum public distribution requirement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaging in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited, or received, with respect to the proposed rule change, by Amex.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[5] *See* Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR–Amex–92–42). *See also* Securities Exchange Act Release Nos. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (SR–Amex–99–42) and 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR–Amex–2002–110).

[6] *See* Securities Exchange Act Release No. 44621 (July 30, 2001), 66 FR 41064 (August 6, 2001) (SR–Amex–2001–23).

[7] *See* Securities Exchange Act Release No. 51258 (February 25, 2005), 70 FR 10700 (March 4, 2005) (SR–Amex–2005–001).

[8] *See* Securities Exchange Act Release No. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR–Amex–2007–45).

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 50355 (September 13, 2004), 69 FR 56252 (September 20, 2004).

[11] *See* Securities Exchange Act Release No. 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR–Amex–2007–34).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–87 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–Amex–2007–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–Amex–2007–87 and should be submitted by November 6, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [14] and, in particular, the requirements of Section 6 of the Act.[15] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that this proposal should benefit investors by providing an exception to the minimum public distribution requirements for Section 107 Securities with a weekly redemption right. The Commission believes that the market price of Section 107 Securities with a weekly redemption right should exhibit a strong correlation to the performance of the relevant underlying index or asset, since holders of such securities will be unlikely to sell them for less than their redemption value if they have a weekly right to be redeemed for their full value. The Commission believes that this exception is reasonable and should allow for the listing and trading of certain Section 107 Securities that would otherwise not be able to be listed and traded on the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission does not believe that the Exchange's proposal raises any novel regulatory issues.[17] In addition, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Section 107 securities.

Therefore the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[18] to approve the proposed rule change on an accelerated basis.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release No. 56271 (August 16, 2007), 72 FR 47107 (August 22, 2007) (SR–NYSE–2007–74).

[18] 15 U.S.C. 78s(b)(2).

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change, as amended (SR–Amex–2007–87), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–20359 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56636; File No. SR–Amex–2007–108]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Increase the Annual Listing Fees for Certain Stock Issues of Listed Companies

October 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 141 of the Amex *Company Guide* to increase the annual listing fees for certain stock issues of listed companies. The text of the proposed rule change is available at *http://www.amex.com*, the Exchange's principal office, and the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Amex proposes to amend Section 141 of the *Company Guide* to increase the annual listing fees for certain stock issues of listed companies. The Exchange believes it is appropriate to increase these fees to cover the costs for maintaining its current programs and also to better align the Exchange's annual listing fees with those of the Nasdaq Capital Market.

The Amex marketplace most closely resembles the Nasdaq Capital Market in terms of listing standards and demographics of listed companies, *i.e.* similar market capitalizations, trading volumes, and stage of development. On April 18, 2007, the Commission adopted an amendment to Rule 146(b) of the Securities Act of 1933 (''1933 Act''), to designate securities listed or authorized for listing on the Nasdaq Capital Market as ''covered securities'' under Section 18 of the 1933 Act.[3] Covered securities under Section 18 of the 1933 Act are exempt from state law registration requirements (''Blue Sky Laws''). Such an exemption from Blue Sky Laws, which companies listed on Amex have long enjoyed, further renders the Nasdaq Capital Market even more similar to the Amex marketplace. While the Nasdaq Capital Market is substantially similar to the Amex equity marketplace, the Exchange believes that certain services—such as associated service offerings, the AMEX IR Alliance, and the AMEX online targeting tool—are provided free of charge to listed companies at Amex, while similar services provided by the Nasdaq Capital Market are subject to fees.

Annual Listing Fee

The annual fees set forth in Section 141 of the Amex *Company Guide,* as depicted in the chart below, currently range from $16,500 to $34,000 depending on the number of shares outstanding. In contrast, the Nasdaq Capital Market charges a flat fee of $27,500 across all levels of shares outstanding. The Exchange's current annual listing fees for stock issues are set forth below:

| Number of shares | Fee |
|---|---|
| 5,000,000 shares or less | $16,500.00 |
| 5,000,001 to 10,000,000 shares | 19,000.00 |
| 10,000,001 to 25,000,000 shares | 21,500.00 |
| 25,000,001 to 50,000,000 shares | 24,500.00 |
| 50,000,001 to 75,000,000 shares | 32,500.00 |
| In excess of 75,000,000 shares | 34,000.00 |

This proposal seeks to amend the annual listing fees set forth in Section 141 of the Amex *Company Guide* as follows:

| Number of shares | Fee |
|---|---|
| 50,000,000 shares or less | $27,500.00 |
| 50,000,001 to 75,000,000 shares | 32,500.00 |
| In excess of 75,000,000 shares | 34,000.00 |

In effect, the Exchange through this proposal would raise annual listing fees only for those outstanding stock issues of 50 million shares or less.

The Exchange believes that the proposed rule change is an equitable allocation of annual listings fees for equity issues consistent with Section 6(b)(4) of the Act.[4] The Exchange further submits that the proposed increases in the annual listing fees for stock issues of 50 million shares or less are appropriate for the purpose of generating revenue to fund Exchange operations and to better align its fees with those of the Nasdaq Capital Market.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Sections 6(b)(4) of the Act[6] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–108 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–108. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[3] *See* Securities Exchange Act Release No. 33–8791 (April 18, 2007), 72 FR 20410 (April 24, 2007) (S7–18–06).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–108 and should be submitted on or before November 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–20362 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56635; File No. SR–Amex–2007–56]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Resolving Uncompared Transactions

October 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on June 4, 2007, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') and on September 18, 2007, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend Rule 724 (''Agents to Resolve DKs'') and the corresponding Commentary to require each member to designate a representative away from the Amex's trading floor that is authorized to resolve uncompared transactions (''DKs'') on the members' behalf.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

Currently, Amex Rule 724 requires each member that executes transactions on Amex's trading floor (''Floor'') to designate another member on the Floor to act for it in its absence to resolve questions and to receive or sign DK notices relating to transactions it executes. Amex wishes to amend this requirement in order to accommodate members with limited resources and members that can handle their own DKs. Amex believes this proposal will benefit associate members that access Amex electronically and do not have the requisite personnel on the Floor. Amex states that it is not appropriate to require such firms to rely on an individual affiliated with another firm for this purpose.

Specifically, this proposal would make it optional for a Floor member to designate another Floor member to act on its behalf regarding DK notices but would require each member to designate a member firm, allied member, registered representative, or any other person required to be registered as a broker-dealer under the Act that is physically located away from the Floor to act in this DK resolution capacity by means of telephone, e-mail, or fax submission.

Amex states that it believes that the proposed rule change is consistent with Section 6 of the Act[2] in general and furthers the objectives of Section 6(b)(5)[3] in particular because the rule change is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Amex has not solicited or received written comments with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–56 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f.

[3] 15 U.S.C. 78f(b)(5).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at Amex's principal office and on Amex's Web site (*http://www.amex.com*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–56 and should be submitted on or before November 6, 2007.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[4]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–20363 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56632; File No. SR–CBOE–2007–82]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Allow the Exchange To List Up to Seven Expiration Months for Broad-Based Security Index Options Upon Which the Exchange Calculates a Constant Three-Month Volatility Index

October 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2007, the Chicago Board Options Exchange, Incorporated ( ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On September 19, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 24.9(a)(2), *Terms of Index Option Contracts*, to allow the Exchange to list up to seven expiration months for broad-based security index options upon which the Exchange calculates a constant three-month volatility index. The Exchange also proposes to remove outdated rule text from Rule 24.9(a)(2). The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule filing is to amend Rule 24.9(a)(2), Terms of Index Options, to allow the Exchange to list up to seven expiration months for broad-based security index options upon which the Exchange calculates a constant three-month volatility index. Currently, Rule 24.9(a)(2) permits the Exchange to list only six expiration months in any index options at any one time.

Volatility products offer investors a unique set of tools for speculating and hedging. For example, CBOE Volatility Index (''VIX'') options, first introduced in February 2006, have proven to be one of the Exchange's most successful new products ever listed, currently averaging over 90,000 contracts traded per day. The Exchange plans to introduce new volatility products and new volatility indexes in the near future. One such index is the CBOE S&P 500 Three-Month Volatility Index (''VXV'').[3]

Similar to the VIX, the VXV is a measure of S&P 500 implied volatility—the volatility implied by S&P option prices—but instead of reflecting a constant 1-month implied volatility period, VXV is designed to reflect the implied volatility of an option with a constant 3 months to expiration. Since there is only one day on which an option has exactly 3 months to expiration, VXV is calculated as a weighted average of options expiring immediately before and immediately after the three-month standard. Accordingly, the Exchange would need to use four consecutive expiration months in order to calculate a constant three-month volatility index.

Under the current application of CBOE Rule 24.9(a)(2), the Exchange generally lists three consecutive near term months and three months on a quarterly expiration cycle. One of the three consecutive near term months is always a quarterly month; however, that near term contract month (which is also a quarterly month) is not included as part of the three months listed on a quarterly expiration cycle. Therefore, in order to permit the addition of four consecutive near term months under current Rule 24.9(a)(2), the Exchange would only be able to list two months on a quarterly expiration cycle. Because of customer demand and other investment strategy reasons for having three months on a quarterly expiration cycle, the Exchange is seeking to increase, from six to seven, the number of expiration months for broad-based security index options upon which the Exchange calculates a constant three-month volatility index.

Without this proposed rule change, if the Exchange calculated a three-month volatility using only three consecutive near term months, this would result in the VXV being calculated with options expiring three months apart about one-third of the time. Another one-third of the time, VXV would be calculated with options expiring two months apart. And the final one-third of the time, VXV

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange calculates volatility indexes on other broad-based security indexes, such as the Dow Jones Industrial Average index (''DJX''), the Nasdaq-100 index (''NDX''), and the Russell 2000 index (''RUT''). The Exchange may calculate a constant three-month volatility index on DJX, NDX or RUT in the future.

would be calculated with options expiring one month apart. As a result, the calculation of the three-month VXV under current Rule 24.9(a)(2) would render the VXV subject to inconsistencies that may make the index unattractive as an underlying for volatility products.

The proposed rule change will permit the Exchange, eight times a year, to add an additional seventh month in order to maintain four consecutive near term contract months. The following examples illustrate the need for a seventh month in order to maintain four consecutive near term contract months. In the following examples, ''X'' represents RUT contract months that will be listed under the current application of Rule 24.9(a)(2).

Example 1: After September 2007 expiration, under the proposed rule change, the Exchange will list January 2008 RUT contracts in order to have four consecutive near term contract months.

| Consecutive near term months | | | 7th Month | March quarterly expiration cycle | | |
|---|---|---|---|---|---|---|
| Oct 07 | Nov 07 | Dec 07 | | Mar 08 | June 08 | Sept 08 |
| X | X | X | Jan 08 | X | X | X |

Example 2: After October 2007 expiration, under the proposed rule change, the Exchange will list February 2008 RUT contracts in order to have four consecutive near term contract months.

| Consecutive near term months | | | 7th Month | March quarterly expiration cycle | | |
|---|---|---|---|---|---|---|
| Nov 07 | Dec 07 | Jan 07 | | Mar 08 | June 08 | Sept 08 |
| X | X | X | Feb 08 | X | X | X |

Example 3: After November 2007 expiration, the Exchange will not have to add a seventh RUT contract month because there will already be four consecutive near term contract months.

| Consecutive near term months | | | 7th Month | March quarterly expiration cycle | | |
|---|---|---|---|---|---|---|
| Dec 07 | Jan 08 | Feb 08 | | Mar 08 | June 08 | Sept 08 |
| X | X | X | N/A | X | X | X |

Example 4: After December 2007 expiration, under the proposed rule change, the Exchange will list April 2008 RUT contracts in order to have four consecutive near term contract months, and to maintain three contract months on the March quarterly expiration cycle, the Exchange will list December 2008 RUT contracts.

| Consecutive near term months | | | 7th Month | March quarterly expiration cycle | | |
|---|---|---|---|---|---|---|
| Jan 08 | Feb 08 | Mar 08 | | June 08 | Sept 08 | Dec 08 |
| X | X | X | April 08 | X | X | X |

Therefore, the Exchange believes that the addition of a fourth consecutive near-term month for broad-based security index options upon which the Exchange calculates a constant three-month volatility index will result in a consistent calculation in which the option series that bracket three months to expiration will always expire one month apart. In order to accommodate the listing of a fourth consecutive near-term month and to maintain the listing of three months on a quarterly expiration cycle, the Exchange proposes the increase, from six to seven, the number of expiration months for broad-based security indexes on which the Exchange calculates a constant three-month volatility index.

The Exchange also proposes to remove outdated rule text from Rule 24.9(a)(2). Specifically, the Exchange proposes to delete the provision that permitted the Exchange to list up to seven expiration months at anyone time for the SPX, MNX and DJX index option contracts, provided that one of those expiration months is November 2004.[4] This allowance has since expired and should be deleted from the Exchange's Rulebook.

[4] This provision was added in July 2004 in response to customer demand for index options expiring in November 2004 to hedge positions in stocks overlying particular index options or to hedge market exposure to the equity markets generally against the uncertainty presented by the elections. *See* Securities Exchange Act Release No. 50063 (July 22, 2004), 69 FR 45357 (July 29, 2004)(SR–CBOE–2004–49).

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the additional listing of a seventh contract month in order to maintain four consecutive near term contract months for those broad-based security index options upon which the Exchange calculates a constant three-month volatility index.

2. Statutory Basis

Because the increase in the number of expiration months is limited to broad-based security indexes upon which the Exchange calculates a constant three-month volatility and because the series could be added without presenting capacity problems, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–82 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–82 and should be submitted on or before November 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–20361 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56633; File No. SR–ISE–2007–60]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities

October 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On August 6, 2007, ISE submitted Amendment No. 1 to the proposed rule change. On August 7, 2007, ISE withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change. On August 15, 2007, ISE filed Amendment No. 3 to the proposed rule change, and on October 9, 2007, ISE filed Amendment No. 4 to the proposed rule change.[3] This order provides notice of the proposal, as amended, and approves the proposal on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

ISE proposes to revise its Rule 2123 to include generic listing standards for series of Investment Company Units (''ICUs'') that are based on U.S. indexes or portfolios, international or global

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 4 replaces and supersedes the original rule filing and all previous amendments thereto.

indexes or portfolios, or on indexes or portfolios described in proposed rule changes previously approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs, options, or other specified index-based securities. Additionally, the Exchange proposes to adopt ISE Rule 2131 to allow for the listing and trading of Portfolio Depositary Receipts (''PDRs'')[4] that are based on U.S. indexes or portfolios, international or global indexes or portfolios, or on indexes or portfolios previously approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs, options, or other specified index-based securities. Further, the Exchange proposes to modify subsection (c)(4) of ISE Rule 2123 to eliminate the requirement that the calculation methodology for the index underlying a series of ICUs be one of those enumerated in subsection (c)(4). The text of the proposed rule change is available at ISE, on ISE's Web site (*http://www.ise.com*), and from the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to revise its Rule 2123 and adopt ISE Rule 2131 to include generic listing standards for series of ICUs and PDRs that are based on U.S. indexes or portfolios, international or global indexes or portfolios, or on indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs, options, or other specified index-based securities. Additionally, proposed ISE Rule 2131 includes generic listing standards for PDRs based on an index or portfolio that consists of stocks listed on U.S. exchanges. This proposed rule change would enable the Exchange to list and trade ETFs pursuant to Rule 19b–4(e) under the Act[5] if each of the conditions set forth in ISE Rules 2123 or 2131, as applicable, is satisfied. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[6] if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.[7] The Commission has approved similar proposals by other exchanges.[8]

a. Background on ETFs

Currently, ISE Rule 2123 provides standards for the listing of ICUs on the Exchange. ICUs are securities issued by a unit investment trust, an open-end management investment company (''open-end mutual fund'') registered under the Investment Company Act of 1940[9] (''1940 Act''), or similar entity based on a portfolio of securities (including fixed income securities) that seeks to provide investment results that correspond generally to the price and yield performance of an index or portfolio of securities. The net asset value (''NAV'') is calculated once a day after the close of the regular trading day. Proposed ISE 2131 allows for the listing and trading of PDRs on the Exchange. PDRs represent securities based on a unit investment trust that holds the securities that comprise an index or portfolio underlying a series of PDRs. Pursuant to ISE Rules 2123 and 2131, ICUs and PDRs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined NAV. When aggregated in the same specified minimum number, ICUs and PDRs must be redeemable by the issuer for the securities and/or cash, with a value equal to the next determined NAV.

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a ''replication'' strategy or a ''representative sampling'' strategy with respect to the ETF portfolio.[10]

An ETF using a replication strategy invests in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy generally invests in a significant number, but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (''IRC'').[11]

ETFs listed pursuant to these proposed generic listing standards (discussed below) or that are traded pursuant to unlisted trading privileges (''UTP'') would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs, and would be covered under the Exchange's surveillance program for equities. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of ETFs listed pursuant to the proposed new listing standards or traded pursuant to UTP. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees.

The Exchange believes that adopting generic listing standards and applying Rule 19b–4(e) should fulfill the intended objective of that rule by

[4] ICUs and PDRs are referred to collectively as ''ETFs.''

[5] 17 CRF 240.19b–4(e).

[6] 17 CFR 240.19b–4(c)(1).

[7] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. *See* 17 CFR 240.19b–4(e)(2)(ii).

[8] *See* Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR–Nasdaq–2006–050); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101); Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR–Amex–2006–78); Securities Exchange Act Release No. 44532 (July 10, 2001), 66 FR 37078 (July 19, 2001) (SR–Amex–2001–25) (modifying generic listing standards for PDRs).

[9] 15 U.S.C. 80a.

[10] In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depository Receipts (''ADRs''), Global Depository Receipts (''GDRs''), or European Depository Receipts (''EDRs'') that trade on exchanges with last-sale reporting representing securities in the underlying index.

[11] For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC, including requirements with respect to the nature and value of the ETF's assets.

allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for a public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular index or portfolio to comply with the proposed generic listing standards under Rule 19b–4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade an ETF based on that index or portfolio.

b. Proposed Generic Listing Standards for PDRs Based on U.S. Stocks

The Commission has previously approved generic listing standards for ETFs based on indexes or portfolios that consist of stocks listed on U.S. exchanges.[12] Proposed Rule 2131 sets forth generic listing standards for PDRs based on an index or portfolio of U.S. Component Stocks, which shall meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $75 million (.01(a)(1)(i) of the Supplementary Material to Rule 2131);
- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares (.01(a)(1)(ii) of the Supplementary Material to Rule 2131);
- The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio (.01(a)(1)(iii) of the Supplementary Material to Rule 2131);
- The index or portfolio shall include a minimum of 13 component stocks (.01(a)(1)(iv) of the Supplementary Material to Rule 2131); and
- All securities in the index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS stocks as defined in Rule 600 of Regulation NMS under the Act (.01(a)(1)(v) of the Supplementary Material to Rule 2131).

c. Proposed Listing and Trading Requirements for ETFs Based on International or Global Indexes or Portfolios

To list an ICU or PDR pursuant to the proposed generic listing standards for international and global indexes or portfolios, the index or portfolio underlying the ETF must satisfy all the conditions contained in proposed ISE Rule 2123(c)(2)(ii) or (iii) and .01(a)(2) or (3) of the Supplementary Material to proposed ISE Rule 2131, respectively. However, for ICUs and PDRs traded on the Exchange pursuant to UTP, only the provisions of proposed ISE Rules 2123(c)(3), (c)(5), (e), (f), and (i); 2131(c) and (e)(2)(ii); and .01(c), (e), (f), and (g) of Supplementary Material to proposed ISE Rule 2131, respectively, will apply. These paragraphs relate to the dissemination of information, surveillance procedures, trading halts, prospectus delivery, trading hours, and minimum price variation.

As with the existing generic listing standards for ETFs based on domestic indexes or portfolios, these generic listing standards for international and global indexes or portfolios are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes or portfolios, they have been adapted as appropriate to apply to international and global indexes or portfolios. The proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes or portfolios, but with modifications for the issues and risks associated with non-U.S. securities. In addition, the Commission has previously approved similar generic listing standards as those proposed in this filing.[13]

ISE Rules 2123(b) and 2131(a) would include definitions of ''U.S. Component Stock'' and ''Non-U.S. Component Stock.'' These new definitions would provide the basis for the standards for indexes or portfolios with either domestic or international stocks, or a combination of both. A ''Non-U.S. Component Stock'' would mean an equity security that is not registered under Section 12(b) or 12(g) of the Act,[14] and that is issued by an entity that: (a) is not organized, domiciled, or incorporated in the United States; and (b) is an operating company (including a real estate investment trust (REIT) or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, but are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. A ''U.S. Component Stock'' would mean an equity security that is registered under Section 12(b) or 12(g) of the Act or an ADR, the underlying equity security of which is registered under Section 12(b) or 12(g) of the Act.

An ADR with an underlying equity security that is registered pursuant to the Act is considered a U.S. Component Stock because the issuer of that underlying security is subject to Commission jurisdiction and must comply with Commission rules. The Exchange proposes that, to list an ETF based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least $100 million (proposed ISE Rule 2123(c)(2)(ii)(A) and .01(a)(2)(i) of the Supplementary Material to proposed ISE Rule 2131);
- Component stocks representing at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (proposed ISE Rule 2123(c)(2)(ii)(B) and .01(a)(2)(ii) of the Supplementary Material to proposed ISE Rule 2131);
- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (proposed ISE Rule 2123(c)(2)(ii)(C) and .01(a)(2)(iii) of the Supplementary Material to proposed ISE Rule 2131);
- The index or portfolio shall include a minimum of 20 component stocks (proposed ISE Rule 2123(c)(2)(ii)(D) and .01(a)(2)(iv) of the Supplementary Material to proposed ISE Rule 2131); and
- Each U.S. Component Stock in the index or portfolio must be listed on a national securities exchange and be an NMS stock as defined in Rule 600 of

[12] *See* ISE Rule 2123; Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR–ISE–2006–48) (approving generic listing standards for ICUs); Securities Exchange Act Release No. 44532 (July 10, 2001), 66 FR 37078 (July 19, 2001) (SR–Amex–2001–25) (modifying generic listing standards for PDRs).

[13] *See supra* note 8.

[14] 15 U.S.C. 78*l*(b) or (g).

Regulation NMS under the Act, and each Non-U.S. Component Stock in the index or portfolio must be listed on an exchange that has last-sale reporting (proposed ISE Rule 2123(b)(2)(ii)(E) and .01(a)(2)(v) of the Supplementary Material to proposed ISE Rule 2131).

The Exchange believes that these proposed standards are reasonable for international and global indexes and portfolios and, when applied in conjunction with the other listing requirements, would result in the listing and trading on the Exchange of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index or portfolio could become a surrogate for the trading of securities not registered in the United States.

The Exchange further notes that, while these standards are similar to those for indexes and portfolios that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million, compared to a minimum market value of at least $75 million for indexes with only U.S. Component Stocks.[15] Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks. Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of component stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify ISE Rule 2123(c)(3) and to adopt .01(b)(2) of the Supplementary Material to proposed ISE Rule 2131 to require that the index value for an ETF listed pursuant to the proposed standards for international and global indexes be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-U.S. Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange's trading hours.

In addition, ISE Rule 2123(c)(3) is being modified and .01(c) of the Supplementary Material to proposed ISE Rule 2131 is being adopted to define the term ''Intraday Indicative Value'' (''IIV'') as the estimate of the value of a share of each ETF that is updated at least every 15 seconds during ISE's trading hours. The Exchange also proposes to clarify in ISE Rule 2123(c)(3) that the IIV would be updated during the hours the ETF trades on the Exchange to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated.

The Exchange is also proposing to add an ISE Rule 2123(c)(6) and .01(h) of the Supplemental Material to proposed ISE Rule 2131 regarding the creation and redemption process for ETFs and compliance with federal securities laws for, in particular, ETFs listed pursuant to the new generic listing standards for international and global indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act. These new provisions would apply to ICUs listed pursuant to ISE Rule 2123(c)(2)(ii) or (iii) or PDRs listed pursuant to .01(a)(2) and (3) of the Supplementary Material to proposed ISE Rule 2131, respectively. These new standards would require that the statutory prospectus or the application for exemption from provisions of the 1940 Act[16] for the ETF being listed pursuant to these new standards state that the ETF must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.[17]

d. Proposed Listing and Trading Requirements for ETFs Based on Indexes or Portfolios Described in a Previously Approved Rule

The Commission has approved generic listing standards providing for the listing pursuant to Rule 19b–4(e) of other derivative securities products based on indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act. The Exchange proposes to add generic listing standards for ETFs that are based on such indexes or portfolios. The Exchange believes that the application of this standard to ETFs is appropriate because the underlying index or portfolio would have been subject to Commission review in the context of the approval of those other proposed rule changes.

This new generic listing standard would be limited to stock indexes and portfolios and would require that each component stock be either: (a) a U.S. Component Stock that is listed on a national securities exchange and is an NMS stock as defined in Rule 600 of Regulation NMS under the Act; or (b) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

e. Other Proposals

The Exchange is proposing to delete general language addressing the applicability of trading halts, which appears in ISE Rule 2123(b)(3), and to add a paragraph (e) to ISE Rule 2123 to more thoroughly address trading halts. The Exchange is also adopting ISE Rule 2131(e)(2)(ii) to address trading halts in PDRs. Specifically, proposed Rule 2123(e) and 2131(e)(2)(ii) require the Exchange to halt trading in a series of ICUs or PDRs (as applicable) whenever a market-wide trading halt has been implemented in response to extraordinary market conditions. In exercising its discretion to halt or suspend trading in a series of ETFs, the Exchange may consider factors such as the extent to which trading in the

[15] Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock.

[16] 15 U.S.C. 80a.

[17] 15 U.S.C. 77a. *et seq.*

underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other factors that may be relevant. When the Exchange is the listing market for a series of ETFs, if the IIV or the official index value applicable to that ETF series is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the official index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

When the Exchange is trading a series of an ETF pursuant to UTP, the Exchange will immediately halt trading in that ETF series if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market data vendor and the listing market halts trading in such ETF series. Further, if the IIV or the value of the underlying index continues not to be calculated or widely available as of the next business day, the Exchange will not begin trading in that series of ETFs. If an interruption in the calculation or wide dissemination of the IIV or the value of the underlying index continues, the Exchange may resume trading in the ETF series only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in such series resumes in the listing market.

The Exchange proposes to adopt ISE Rule 2131(f) to limit its liability with respect to the dissemination of information related to PDRs. ISE already has in place a similar provision in ISE Rule 2123(e). Further, proposed ISE Rule 2131(f) is identical to NYSE Arca Rule 8.100(f) (Limitation of Liability of the Corporation).

The Exchange also proposes to eliminate the requirement that the prescribed calculation methodology for the index underlying a series of ICUs must be one of those enumerated in the ISE Rule 2123(c)(4). The proposed rule change is based on approved rule changes of the Amex, NYSE, and NYSE Arca.[18]

The Exchange is proposing other minor and clarifying changes to ISE Rule 2123. ISE Rule 2123(c)(2)(i)(E) has been modified to reflect the adoption of Regulation NMS. Proposed Rule 2123(c) has been added to make sure that an entity that advises an index provider or calculator and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETFs.

Additionally, the Exchange is proposing to amend Appendix A to Chapter 21 (ISE Stock Exchange, LLC Trading Rules) to include reference to ISE Rules 702 (Trading Halts) and 703 (Trading Halts Due to Extraordinary Market Volatility) to clarify that both of these rules apply to securities traded on the ISE Stock Exchange.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5) of the Act.[19] The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–60 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–60 and should be submitted on or before November 6, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In

[18] *See* Securities Exchange Act Release No. 55546 (March 27, 2007), 72 FR 15929 (April 3, 2007) (SR–NYSEArca–2007–14) (approving the elimination of the requirement regarding index weighting and calculation methodology); Securities Exchange Act Release No. 55545 (March 27, 2007), 72 FR 15928 (April 3, 2007) (SR–NYSE–2007–12); Securities Exchange Act Release No. 55544 (March 27, 2007), 72 FR 15923 (April 3, 2007) (SR–Amex–2007–07).

[19] 15 U.S.C. 78f(b)(5).

[20] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act [21] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, the Exchange must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act [22] and Rule 19b–4 thereunder [23] to list and trade, or trade pursuant to UTP, any ETF based on an index or portfolio comprised of foreign securities. The Exchange also must file a proposed rule change to list and trade, or trade pursuant to UTP, ETFs based on indexes or portfolios described in rule changes that have previously been approved by the Commission as underlying benchmarks for derivative securities. However, Rule 19b–4(e) provides that the listing or trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. ISE's proposed rules for the listing and trading of ETFs pursuant to Rule 19b–4(e) based on (1) certain indexes or portfolios with components that include foreign securities or (2) indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities, fulfill these requirements. Use of Rule 19b–4(e) by ISE to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.[24]

The Commission previously has approved generic listing standards for other exchanges that are substantially similar to those proposed here by ISE.[25] This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that ISE's proposal is consistent with the Act on the same basis that it approved the other exchanges' generic listing standards for ETFs based on U.S. component stocks, international or global indexes or portfolios, and indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities.

Proposed ISE Rule 2123(c) and .01(a) of the Supplementary Material to proposed ISE Rule 2131 establish standards for the composition of an index or portfolio underlying an ETF that may be listed or traded on ISE. These requirements are designed, among other things, to require that components of an index or portfolio underlying the ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. The Commission believes that, taken together, these standards are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and when applied in conjunction with the other applicable listing requirements will permit the listing and trading of only ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude ISE from listing and trading ETFs that might be used as surrogate for trading in unregistered securities. The requirement that each component security underlying an ETF be an NMS stock (in the case of a U.S. Component Stock) or listed on an exchange and subject to last-sale reporting (in the case of a Non-U.S. Component Stock) also should contribute to the transparency of the market for these ETFs.

The proposed generic listing standards will permit ISE to list and trade an ETF if the Commission has previously approved an SRO rule change that contemplates listing and trading a derivative product based on the same underlying index. ISE would be able to rely on that earlier approval order, provided that: (1) Each of the securities comprising the underlying index is (a) a U.S. Component Stock listed on a national securities exchange, and an NMS stock, as that term is defined by Rule 600 of Regulation NMS; or (b) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting; and (2) ISE complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing and information dissemination.

The Commission believes that ISE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[26] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. ISE's proposal requires the value of the index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds during the time when the ETF shares trade on the Exchange.[27] ISE has represented that, if an underlying index or portfolio value is no longer calculated or available, it would commence delisting proceedings for the associated ETF.

In addition, an IIV, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during trading hours for the ETF on the Exchange. The IIV must reflect changes in the exchange rate between the U.S. dollar and the currency in which any index or portfolio component stock is denominated. The Commission believes that the proposed rules regarding the dissemination of the index value and the IIV are reasonably designed to promote transparency in the pricing of ETFs and thus are consistent with the Act.

The Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. These generic listing standards provide that

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(1).

[23] 17 CFR 240.19b–4.

[24] The Commission notes, however, that the failure of a particular ETF to meet these generic listing standards would not preclude ISE from submitting a separate proposed rule change to list and trade the ETF.

[25] *See, e.g.*, Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 19571 (February 15, 2007) (SR–NASDAQ–2006–50); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101); Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2007) (SR–Amex-2006–78).

[26] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[27] *See* proposed ISE Rule 2123(c)(3) and .01(b)(2) to the Supplemental Material to proposed ISE Rule 2131. If an index or portfolio value does not change for some of the time that the ETF trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours. *See* proposed ISE Rule 2123(c)(3) and .01(c) to the Supplemental Material to proposed ISE Rule 2131.

the issuer of an ETF must represent that it will calculate the NAV and make it available daily to all market participants at the same time.[28]

The Commission believes that the proposal is reasonably designed to preclude trading of ETFs when transparency is impaired. Proposed ISE Rules 2123(e) and 2131(e)(2)(ii) provide that, when ISE is the listing market, ISE may halt trading when an interruption occurs in the calculation or dissemination of the IIV or index value applicable to an ETF. If the interruption continues, ISE would halt trading no later than the beginning of the next trading day. In addition, proposed ISE Rules 2123(e) and 2131(e)(2)(ii) set forth trading halt procedures when ISE trades the ETF pursuant to UTP. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.[29]

In approving this proposal, the Commission relied on ISE's representation that its surveillance procedures are adequate to properly monitor the trading of the ETFs listed pursuant to the proposed new listing standards or traded on a UTP basis.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that ISE's proposal is substantially similar to other proposals that have been approved by the Commission.[30] The Commission does not believe that ISE's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by ISE, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[31] to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–ISE–2007–60), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–20360 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

[28] *See* proposed ISE Rules 2123(a)(6) and 2131(e)(1)(ii).

[29] *See* NYSE Arca Equities Rule 7.34; NYSE Rule 1100(f)(2); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101); Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR–NYSEArca-2006–77).

[30] *See supra* notes 8 and 12.

[31] 15 U.S.C. 78s(b)(2).

[32] *Id.*

[33] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56647; File No. SR–ISE–2007–80]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Options Listing Criteria for Underlying Securities

October 11, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 4, 2007, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. On October 5, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend ISE Rule 502(b)(5) and add subparagraph (6) to ISE Rule 502(b) for the purpose of permitting the Exchange to list and trade individual equity options that are otherwise ineligible for listing and trading if such option is listed and traded on another national securities exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.ise.com/webform/homeDefault.aspx.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to revise the Exchange's options listing standards so that, as long as the options maintenance listing standards set forth in ISE Rule 503 are met and the option is listed and traded on another national securities exchange, the ISE would be able to list and trade the option. ISE Rule 502 sets forth the requirements that an underlying equity security must meet before the Exchange may initially list options on that security. The ISE notes that these requirements are uniform among the options exchanges.

ISE Rule 502(b)(5) relates to the minimum market price that an underlying security must trade at for an option to be listed on it and applies to the listing of individual equity options on both ''covered'' and ''uncovered'' underlying securities.[3] In the case of an underlying security that is a ''covered security,'' as defined under section 18(b)(1)(A) of the 1933 Act, the closing market price of the underlying security must be at least $3 per share for the five (5) previous consecutive business days prior to the date on which the ISE submits an option class certification to The Options Clearing Corporation. In connection with underlying securities deemed to be ''uncovered,'' Exchange rules require that such underlying security be at least $7.50 for the majority of business days during the three (3) calendar months preceding the date of selection for such listing. In addition, an

[3] Section 18(b)(1)(A) of the Securities Act of 1933 (''1933 Act'') provides that, ''[a] security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities).'' *See* 15 U.S.C. 77r(b)(1)(A).

alternative listing procedure permits the listing of such options so long as: (1) The underlying security meets the guidelines for continued approval contained in ISE Rule 503; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume (''ADTV'') for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts. Subparagraphs (1) through (4) of ISE Rule 502(b) further sets forth minimum requirements for an underlying security, such as shares outstanding, number of holders, and trading volume.

When the ISE first commenced operations, if an option failed to meet the original listing requirements, the ISE could not list that option, even if the option met the continued listing requirements of one or more other exchanges and traded on those exchanges. In order to somewhat remedy this situation, in 2001, the Exchange proposed, and the Commission approved, amendments to the ISE's original listing criteria, which permitted the ISE to list options that (i) met the ISE's continued listing criteria, (ii) were traded on at least one other exchange, and (iii) had ADTV across all exchanges of at least 5,000 contracts.[4] The Exchange notes that the 2001 Filing, while permitting the ISE to list some of the more actively traded options, does not permit the listing of less active options that are currently trading at other options exchanges. The options exchange (or exchanges) that may be fortunate enough to list an option that at first met the original listing criteria, but subsequently fails to do so, is provided a trading monopoly inconsistent with the multiple trading of options, fostering competition, and the maintenance of a national market system. Under this proposed rule change, an option may be multiply listed and traded as long as one other options exchange is trading the particular option and such underlying security of the option meets the Exchange's continued listing requirements.

The ISE notes that the requirements for listing additional series of an existing listed option (*i.e.*, continued listing guidelines) are less stringent, largely because in total the Exchange's guidelines assure that options will be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards.

The ISE believes that, although the continued listing requirements are uniform among the options exchanges, the application of both the original and continued listing standards in the current market environment have had an anti-competitive effect. Specifically, the Exchange notes that on several occasions it has been unable to list and trade options classes that trade elsewhere because the underlying security of such option did not at that time meet original listing standards. However, the other options exchange(s) may continue to trade such options (and list additional series) based on the lower maintenance listing standards, while the ISE may not list any options on such underlying security. The Exchange believes this clearly is anti-competitive and inconsistent with the aims and goals of a national market system in options.

To address this situation, the Exchange proposes to add new ISE Rule 502(b)(6) and amend the current listing requirement adopted by the 2001 Filing. Specifically, proposed ISE Rule 502(b)(6) provides that, notwithstanding that a particular underlying security may not meet the requirements set forth in ISE Rule 502(b)(1), (2), (4), and (5), the Exchange nonetheless could list and trade an option on such underlying security if (i) the underlying security meets continued listing requirements under ISE Rule 503 and (ii) options on such underlying security are listed and traded on at least one other registered national securities exchange. ISE Rule 502(b)(5)(iii), which references an alternative original listing requirement, would be deleted. In connection with the proposed changes, the Exchange represents that the procedures currently employed to determine whether a particular underlying security meets the initial listing criteria will similarly be applied to the continued listing criteria.

The Exchange believes that this proposal is narrowly tailored to address the circumstances where an options class is currently ineligible for listing on the ISE, while at the same time such option is trading on another options exchange(s). The Exchange notes that when an underlying security meets the maintenance listing requirements, and at least one other exchange lists and trades options on the underlying security, the option is available to the investing public. Therefore, the ISE notes that the current proposal will not introduce any inappropriate additional listed options classes. The Exchange submits that the adoption of the proposal is essential for competitive purposes and to promote a free and open market for the benefit of investors.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in section 6(b)(5), in that the proposed change will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**II. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2007–80 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[4] *See* Securities Exchange Act Release No. 45220 (December 31, 2001), 67 FR 760 (January 7, 2002) (order approving a proposed rule change revising the original listing criteria for underlying securities in ISE Rule 502) (the ''2001 Filing'').

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–80 and should be submitted on or before November 7, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and, in particular, with the requirements of section 6(b) of the Act[6] and the rules and regulations thereunder. The Commission finds that the Exchange's proposal is consistent with section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposal addresses circumstances where an equity option class is ineligible for initial listing on the Exchange, even though it meets the Exchange's continued listing requirements and is trading on another options exchange. Therefore, the proposed rule change should help promote competition among the exchanges that list and trade options. The Commission notes, and the Exchange represents, that the procedures currently employed to determine whether a particular underlying security meets the initial equity option listing criteria will similarly be applied by the Exchange when determining whether an underlying security meets the its continued listing criteria.

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,[8] for approving the proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the proposed rule change is substantially identical to the proposed rule change submitted by the American Stock Exchange LLC,[9] which was previously approved by the Commission after notice and comment, and therefore does not raise any new regulatory issues.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act[10] that the proposed rule change (SR–ISE–2007–80), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–20461 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

[5] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 56598 (October 2, 2007) (SR–Amex–2007–48).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56637; File No. SR–NYSEArca–2007–92]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to Generic Listing and Trading Rules for Index-Linked Securities

October 10, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 11, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. On September 25, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On October 3, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. On October 5, 2007, the Exchange filed Amendment No. 3 to the proposed rule change. This order provides notice of, and approves, the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6) to: (i) Include generic listing and trading rules for commodity-linked securities (''Commodity-Linked Securities'') and currency-linked securities (''Currency-Linked Securities'' and, together with Equity Index-Linked Securities[3] and Commodity-Linked Securities, collectively, ''Index-Linked Securities''); (ii) make conforming changes to Commentary .01 of NYSE Arca Equities Rule 5.2(j)(6) and extend its application to Currency-Linked Securities; and (iii) make minor changes to the existing provisions of NYSE Arca Equities Rule 5.2(j)(6) to conform the rule with changes to defined terms, changes to certain internal cross-references, and the generic listing and trading standards for Index-Linked Securities of the New York Stock Exchange LLC (''NYSE'').[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Currently, NYSE Arca Equities Rule 5.2(j)(6) relates only to the listing and trading of securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities, also known as ''Index-Linked Securities.'' *See* NYSE Arca Equities Rule 5.2(j)(6). For purposes of the proposed rule change, however, the Exchange seeks to modify the name of such securities to be ''Equity Index-Linked Securities,'' among other proposed changes described herein.

[4] *See* Section 703.22 of the NYSE Listed Company Manual.

Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Arca proposes to amend NYSE Arca Equities Rule 5.2(j)(6) to: (i) Include provisions for the listing and trading of Commodity-Linked Securities and Currency-Linked Securities pursuant to Rule 19b–4(e) under the Act; [5] (ii) make conforming changes to Commentary .01 of NYSE Arca Equities Rule 5.2(j)(6) and extend its application to Currency-Linked Securities; and (iii) make minor changes to the existing provisions of NYSE Arca Equities Rule 5.2(j)(6) to conform the rule with changes to defined terms, changes to certain internal cross references, and NYSE's generic listing and trading rules for Index-Linked Securities.

*Generic Listing Standards:* Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1),[6] if the Commission has approved, pursuant to section 19(b) of the Act,[7] the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. As a result, the Exchange seeks Commission approval to adopt generic listing standards under amended NYSE Arca Equities Rule 5.2(j)(6), pursuant to which it would be able to continue to list and trade Equity Index-Linked Securities and list and trade Commodity-Linked Securities and Currency-Linked Securities, in each case, without individual Commission approval of each such product. The Exchange represents that any securities it lists and/or trades pursuant to new NYSE Arca Equities Rule 5.2(j)(6), as amended, will satisfy the standards set forth therein. The Exchange states that, within five business days after commencement of trading of an Index-Linked Security pursuant to proposed NYSE Arca Equities Rule 5.2(j)(6), the Exchange will file a Form 19b–4(e), in accordance with Rule 19b–4(e)(2)(ii) under the Act.[8]

*Index-Linked Securities:* Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing. Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (''Equity Reference Asset''). Commodity-Linked Securities are proposed to be defined as securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in NYSE Arca Equities Rule 8.201) or a basket or index of any of the foregoing (''Commodity Reference Asset''). Finally, Currency-Linked Securities are proposed to be defined as securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202) or a basket or index of any of the foregoing (''Currency Reference Asset,'' and together with Equity Reference Asset and Commodity Reference Asset, collectively, ''Reference Asset'').[9]

Index-Linked Securities are the non-convertible debt of an issuer with a term of at least one year, but not greater than thirty years. Index-Linked Securities may or may not make interest payments based on dividends or other cash distributions paid on the components comprising the Reference Asset to the holder during the term. In addition, each Index-Linked Security will trade as a single, Exchange-listed security.

The Exchange represents that the proposed generic listing standards to list and trade Index-Linked Securities pursuant to Rule 19b–4(e) under the Act will not apply if the payment at maturity is based on a multiple of the negative performance of the applicable Reference Asset. In addition, an Index-Linked Security may or may not provide ''principal protection,'' *i.e.*, a minimum guaranteed amount to be repaid.[10] The Exchange further states that Index-Linked Securities do not give the holder any right to receive a portfolio component(s), dividend payments, or any other ownership right or interest in the portfolio or component(s) comprising the applicable Reference Asset. Pursuant to amended NYSE Arca Equities Rule 5.2(j)(6), the current or composite value of a Reference Asset, as applicable, will be widely disseminated at least every 15 seconds during the trading day.[11]

*Proposed Standards for All Index-Linked Securities:* With respect to the current requirements applicable to all Index-Linked Securities, the Exchange proposes to amend the provision related to the required minimum tangible net worth [12] of an issuer of Index-Linked Securities such that, if the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Exchange would rely on such affiliate's tangible net worth for purposes of this requirement and include in its calculation all Index-Linked Securities that are fully and unconditionally guaranteed by such affiliate. In addition, for purposes of this requirement, government issuers and supranational entities would be evaluated on a case-by-case basis.

If the Reference Asset of an Index-Linked Security listed pursuant to proposed NYSE Arca Equities 5.2(j)(6) is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer is required to erect a ''firewall'' around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to such index, and a third party who is not a broker-dealer would be required to calculate the value of such index. In addition, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator, or that makes decisions regarding the index or portfolio composition, methodology, and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 240.19b–4(c)(1).

[7] 15 U.S.C. 78s(b).

[8] *See* 17 CFR 240.19b–4(e)(2)(ii); 17 CFR 249.820.

[9] The Exchange understands that the holder of an Index-Linked Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component assets of a Reference Asset. For example, an Index-Linked Security may be subject to a ''cap'' on the maximum principal amount to be repaid to holders, or a ''floor'' on the minimum principal amount to be repaid to holders, at maturity.

[10] Some Index-Linked Securities may provide for ''contingent'' protection of the principal amount, whereby principal protection may not apply if the Reference Asset at any point in time during the term of such securities reaches a certain pre-determined level.

[11] *See infra* note 15.

[12] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(A)(e). The Exchange defines ''tangible net worth'' as total assets, Less intangible assets and total liabilities. Intangibles include non-material benefits, such as goodwill, patents, copyrights, and trademarks.

regarding the applicable index or portfolio.[13]

Index-Linked Securities and transactions therein will be subject to all Exchange rules governing the trading of equity securities, including its equity margin rules.[14] The Exchange represents that Index-Linked Securities will trade during all three trading sessions pursuant to NYSE Arca Equities Rule 7.34(a).[15]

With respect to trading halts,[16] in the case of Commodity-or Currency-Linked Securities, if the indicative value or the Commodity Reference Asset value or Currency Reference Asset value, as the case may be, applicable to a series of such securities is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the underlying index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Exchange will implement written surveillance procedures for Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable.[17] The Exchange states that it intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in Index-Linked Securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of such securities in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange states that it may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

*Equity Index-Linked Securities:* Equity Index-Linked Securities would be subject to the criteria in amended NYSE Arca Equities Rule 5.2(j)(6)(B)(I) for initial and continued listing. The Exchange proposes to make certain revisions to this section to conform to NYSE's current generic listing and trading standards for Index-Linked Securities and changes with respect to certain defined terms and internal cross references. Specifically, the Exchange proposes to make the following notable modifications:

- The minimum of ten component securities comprising the Equity Reference Asset must include different issuers.[18]
- The index or indexes to which the security is linked shall have been reviewed and approved for the trading of investment company units or options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder.[19]
- All component securities shall be either (A) securities (other than foreign country securities and American Depository Receipts (''ADRs'')) that are (i) Issued by an Act reporting company that is listed on a national securities exchange and (ii) an ''NMS stock'' (as defined in Rule 600 of Regulation NMS) [20] or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not ISG members or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index.[21]

*Commodity-Linked Securities:* The Exchange proposes to incorporate generic listing and trading standards for Commodity-Linked Securities. Commodity-Linked Securities will be subject to the criteria in proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(II) for initial and continued listing. Each issue of Commodity-Linked Securities must meet one of the initial listing standards set forth below:

- The Commodity Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Based Trust Shares or options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for components of a Commodity Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. A Commodity Reference Asset may include components representing not more than 10% of the dollar weight of such Commodity Reference Asset for which the pricing information is derived from markets that do not meet the foregoing requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Commodity Reference Asset.[22]

In addition, the issue must meet both of the following initial listing criteria:

- The value of the Commodity Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34); [23] and
- In the case of Commodity-Linked Securities that are periodically redeemable, the indicative value of such securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

The Exchange will commence delisting or removal proceedings if any of the foregoing initial listing criteria are not continuously maintained. The

[13] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(C). The Exchange states that NYSE Arca Equities Rule 7.26 (Limitations on Dealings), which imposes certain restrictions on ETP Holders, would apply to the trading of Commodity-Linked and Currency-Linked Securities. *See* NYSE Arca Equities Rule 7.26; NYSE Arca Equities Rule 1.1 (defining ETP Holder).

[14] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(D).

[15] Pursuant to NYSE Arca Rule 7.34(a), NYSE Arca Marketplace, which is the equities trading facility of NYSE Arca Equities, generally has three trading sessions each day the Exchange is open for business: (1) an Opening Session (4 a.m. to 9:30 a.m. Eastern Time or ''ET''), during which the Opening Auction and the Market Order Auction occur; (2) a Core Trading Session (9:30 a.m. to 4:00 p.m. ET); and (3) a Late Trading Session (4 p.m. to 8 p.m. ET).

[16] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(E).

[17] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(F).

[18] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(a).

[19] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(1).

[20] *See* 17 CFR 242.600(b)(47).

[21] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(vii).

[22] *See* Securities Exchange Act Release No. 56525 (September 25, 2007), 72 FR 56114 (October 2, 2007) (SR–NYSE–2007–76) (approving the adoption of certain exceptions to the pricing information requirements with respect to components underlying Commodity-Linked Securities and Currency-Linked Securities).

[23] *See supra* note 15.

Exchange will also commence delisting or removal proceedings:

• If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than $400,000;

• If the value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of proposed NYSE Arca Equities Rule 5.2(j)(6); or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

*Currency-Linked Securities:* The Exchange also proposes to incorporate generic listing and trading standards for Currency-Linked Securities. Currency-Linked Securities will be subject to the criteria in proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(III) for initial and continued listing. Currency-Linked Securities must meet one of the initial listing standards set forth below:

• The Currency Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Currency Trust Shares or options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or

• The pricing information for each component of a Currency Reference Asset must be (x) the generally accepted spot price for the currency exchange rate in question or (y) derived from a market which (i) Is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (ii) is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission. A Currency Reference Asset may include components representing not more than 10% the dollar weight of such Currency Reference Asset for which the pricing information is derived from markets that do not meet the requirements of either (x) or (y) above; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Currency Reference Asset.[24]

In addition, the issue must meet both of the following initial listing criteria:

• The value of the Currency Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session; [25] and

• In the case of Currency-Linked Securities that are periodically redeemable, the indicative value of such securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

The Exchange will commence delisting or removal proceedings if any of the foregoing initial listing criteria are not continuously maintained. The Exchange will also commence delisting or removal proceedings under any of the following circumstances:

• If the aggregate market value or the principal amount of the Currency-Linked Securities publicly held is less than $400,000;

• If the value of the Currency Reference Asset is no longer calculated or available and a new Currency Reference Asset is substituted, unless the new Currency Reference Asset meets the requirements of proposed NYSE Arca Equities Rule 5.2(j)(6); or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

*Information Circular:* Upon evaluating the nature and complexity of each Index-Linked Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to ETP Holders describing the Index-Linked Securities. Accordingly, the particular structure and corresponding risks of an Index-Linked Security traded on the Exchange will be highlighted and disclosed. In particular, the Information Circular will discuss the risks involved in trading Index-Linked Securities during the Opening and Late Trading Sessions when an updated indicative value, if required, is not calculated or publicly disseminated.[26] The Information Circular will also set forth the Exchange's suitability rule that requires ETP Holders recommending a transaction in Index-Linked Securities: (1) To determine that such transaction is suitable for the customer (NYSE Arca Equities Rule 9.2(a)); and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Information Circular will reference the requirement that ETP Holders must deliver a prospectus to investors purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction. The Information Circular will note that all of the Exchange's equity trading rules will be applicable to trading in Index-Linked Securities.

*Commentary .01:* The Exchange also proposes to make conforming changes to Commentary .01 of NYSE Arca Equities Rule 5.2(j)(6) to extend the application of Currency-Linked Securities therein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[27] in general, and furthers the objectives of section 6(b)(5) of the Act,[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[24] *See supra* note 22.

[25] *See supra* note 15.

[26] Specifically, the Exchange requires ETP Holders to disclose to their non-ETP Holder customers that an updated Reference Asset value or indicative value may not be calculated or publicly disseminated during extended trading hours. Because the indicative value is not calculated or widely disseminated during the Opening and Late Trading Sessions, an investor who is unable to calculate an implied value for a derivative securities product in those sessions may be at a disadvantage to market professionals. The Exchange believes that requiring ETP Holders to disclose this risk to non-ETP Holders will facilitate informed participation in extended hours trading. *See* Securities Exchange Act Release No. 56270 (August 15, 2007), 72 FR 47109 (August 22, 2007) (SR–NYSEArca–2007–74).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2007–92 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–92 and should be submitted on or before November 6, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [29] and, in particular, the requirements of section 6 of the Act.[30] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[31] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*Generic Listing Standards for Commodity-Linked and Currency-Linked Securities:* To list and trade Commodity-Linked and Currency-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act [32] and Rule 19b–4 thereunder.[33] However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) under the Act if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Commodity-Linked Securities and Currency-Linked Securities pursuant to Rule 19b–4(e) fulfill these requirements.

The Exchange's ability to rely on Rule 19b–4(e) to list and trade Commodity-Linked and Currency-Linked Securities that meet the applicable requirements of proposed NYSE Arca Equities Rule 5.2(j)(6) should reduce the time frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

The Commission has previously approved generic listing standards for such securities that are substantially similar to the Exchange's current proposal.[34] The Commission believes that the proposed generic listing standards for Commodity-Linked and Currency-Linked Securities, in addition to the proposed changes to the generic listing standards applicable to all Index-Linked Securities and Equity Index-Linked Securities, should fulfill the intended objective of Rule 19b–4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.[35]

*Listing and Trading Index-Linked Securities:* Taken together, the Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked Securities listed pursuant to Rule 19b–4(e). All such securities listed under their respective generic standards will be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities, including the equity margin rules, on the Exchange.

As set forth more fully above, the Exchange seeks to conform the minimum tangible net worth requirements for each issuer of Index-Linked Securities and the specific listing and trading requirements related to Equity Index-Linked Securities to the standards similarly adopted by other national securities exchanges.[36] In addition, with respect to Commodity-Linked and Currency-Linked Securities, the Exchange's proposal requires that: (1) The applicable Reference Assets underlying such securities must have been reviewed and approved for trading by the Commission; or (2) the pricing information with respect to the underlying components representing at least 90% of the dollar weight of the applicable Reference Asset must have been derived from (a) A market which is an ISG member or affiliate or with which the Exchange has in place a comprehensive surveillance sharing agreement, or (b) certain other required sources. An underlying component for which the pricing information does not comply with the foregoing requirements cannot exceed 7% of the dollar weight

[29] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f.

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78s(b)(1).

[33] 17 CFR 240.19b–4.

[34] *See* Securities Exchange Act Release Nos. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR–Amex–2007–45) (approving, among other things, generic listing standards for Commodity-Linked Securities and Currency-Linked Securities); and 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR–NYSE–2007–27) (approving generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities).

[35] The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

[36] *See supra* note 34.

of the applicable Reference Asset. The Commission believes that these requirements are designed to ensure that the trading markets for the underlying components are adequately capitalized and sufficiently liquid and should minimize the potential for manipulation and permit the Exchange to identify potential trading and other violations of its rules. The Commission notes that such requirements should also contribute to the transparency of the Commodity Reference Asset or Currency Reference Asset, as the case may be. By requiring at least 90% of the pricing information for the relevant components to be readily available, the proposed listing standards of NYSE Arca Equities 5.2(j)(6) should help ensure a fair and orderly market for Commodity-Linked and Currency-Linked Securities listed and traded pursuant to Rule 19b–4(e).

The Exchange has also developed delisting criteria that would permit it to suspend trading in Index-Linked Securities in circumstances that make further dealings in such products inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each such security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the underlying index for Equity Index-Linked Securities, or the applicable Commodity Reference Asset or Currency Reference Asset or, in the case of Commodity-Linked and Currency-Linked Securities that are periodically redeemable, the corresponding indicative value, is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption and will commence delisting proceedings.

*Surveillance:* The Commission notes that any Index-Linked Securities approved for listing and trading would be subject to the Exchange's existing surveillance procedures governing derivative products, as well as procedures the Exchange represents are adequate to properly monitor the trading in such securities during all Exchange trading sessions. The Exchange also has represented that it will be able to obtain information from other exchanges that are members or affiliate members of ISG and has a general policy prohibiting the distribution of material, non-public information by its employees.

*Information Memorandum:* The Exchange has represented that it will distribute, as appropriate, an Information Circular to members describing the product, the particular structure of the product, and the corresponding risks of trading Index-Linked Securities, including the risks involved in trading such securities during the Opening and Late Trading Sessions when an updated indicative value, if required, is not calculated or publicly disseminated.[37] In addition, the Information Circular will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Index-Linked Securities to customers, the prospectus delivery requirements of ETP Holders. The Information Circular will also note that all of the Exchange's equity trading rules will be applicable to the trading of Index-Linked Securities.

*Firewall Procedures:* The Exchange has further represented that if the Reference Asset is an underlying index that is maintained by a broker-dealer, such broker-dealer will establish a ''firewall'' around personnel responsible for the maintenance of such underlying index or who have access to information concerning changes and adjustments to the underlying index. As an added measure, a third-party who is not a broker-dealer will be required to calculate the value of the index. In addition, the Exchange has stated that any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the underlying index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable underlying index or portfolio. With respect to trading on the Exchange, NYSE Arca has stated that, with respect to any issue of Commodity-Linked or Currency-Linked Securities, ETP Holders acting as a registered market maker will be restricted, among others, from making markets in and trading the components underlying the Commodity Reference Asset or Currency Reference Asset, as the case may be, or any derivative instruments thereof, pursuant to Commentary .01 of NYSE Arca Equities Rules 5.2(j)(6) and 7.26 (Limitations on Dealings).

*Acceleration:* The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Exchange requested accelerated approval of the proposal to facilitate the prompt listing and trading of Index-Linked Securities and, in particular, Commodity-Linked Securities and Currency-Linked Securities, based on the specified criteria of proposed NYSE Arca Equities Rule 5.2(j)(6). The Commission notes that the Exchange's proposed changes to the generic listing standards that apply to all Index-Linked Securities, proposed changes to the generic listing standards for Equity Index-Linked Securities, and the proposed generic listing standards for Commodity-Linked and Currency-Linked Securities are based on previously approved listing standards for such securities.[38] The Commission is presently not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Index-Linked Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[39] to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NYSEArca–2007–92), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–20330 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

[37] *See supra* note 26.

[38] *See supra* note 34.

[39] 15 U.S.C. 78s(b)(2).

[40] *Id.*

[41] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56622; File No. SR–Phlx–2007–77]**

## Self-Regulatory Organizations; The Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Web CRD Fingerprinting Fees

October 5, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its fingerprinting fees, which appear on Appendix A of its fee schedule, so that the charge for the first and third submission of a fingerprint card will be lowered from $35.00 to $30.25. The Exchange also proposes to replace references to ''NASD'' on the Exchange's fee schedules with references to ''FINRA.''

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and at *http://www.phlx.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, the Exchange's fee schedule includes fees that are imposed in connection with participation in the National Association of Securities Dealers, Inc. (''NASD,'' n/k/a/ the Financial Industry Regulatory Authority, Inc., ''FINRA'') Web Central Registration Depository (''Web CRD''). The fingerprinting fees are paid directly to FINRA and vary depending on the submission: for a first card submission, the fee is $35.00; for a second card submission, the fee is $13.00; and for a third card submission, the fee is $35.00. For processing fingerprint results for a member who had prints processed through a self-regulatory organization and not FINRA, the fee is $13.00.

FINRA intends to amend the fingerprinting fees effective for fingerprints processed on or after October 1, 2007, so that the charge for the first and third submission of a fingerprint card will be lowered from $35.00 to $30.25.[5] The fees for processing a second fingerprint card submission and for processing fingerprint cards where the member had prints processed through a self-regulatory organization and not FINRA will remain at $13.00.

Therefore, the Exchange proposes to amend its fee schedule to reflect the lower Web CRD fingerprinting fees charged by FINRA. The Exchange also proposes to update its fee schedule to replace references to the NASD with references to FINRA.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(4) of the Act[7] in particular. The Exchange believes that it is an equitable allocation of reasonable fees and other charges among Exchange members because it will reflect FINRA's reduction for the first and third submission of a fingerprint card from $35.00 to $30.25.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2007–77 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* FINRA Information Notice titled ''Fingerprint Processing Fees'' dated September 20, 2007.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–77 and should be submitted on or before November 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–20329 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56626; File No. SR–Phlx–2007–60]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Structured Equity Products

October 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 14, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to update its rules regarding the listing of equity securities. Specifically, the Exchange proposes to modify Phlx Rule 802, Rule 806 (Initial Public Offerings), Rule 807 (Registration Under the Exchange Act), and Rule 837 (Annual Reports). The Phlx Fee Schedule will also be amended to add initial and continued listing fees for certain structured equity securities on the Exchange (''Structured Equity Products'').[3] The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and at *http://www.Phlx.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to update certain of its listing rules and fees in order to attract the listing of Structured Equity Products. Currently, the vast majority of equity securities that trade on the Phlx are listed on other exchanges and traded on the Phlx pursuant to unlisted trading privileges (''UTP''). This allows the Exchange to compete for the trading volume of a security. However, the Phlx now intends to actively pursue serving as the listing market for certain Structured Equity Products.

The Phlx has long had a series of rules (the ''800 Series'') that create standards regarding both the security to be listed and traded on Phlx, as well as regarding the issuer of the security. In order to attract the listing of the Structured Equity Products, Phlx proposes modifications to the 800 Series to accommodate the specific attributes of many structured equity securities.

*Phlx Rule 802.* Phlx Rule 802 identifies factors to be evaluated by the Exchange when reviewing and preparing its confidential listing opinion as to the eligibility of an applicant's securities. Among other things, Phlx Rule 802 currently states that the applicant company must be a ''going concern.''[4] The proposed rule change would delete the ''going concern'' requirement in order to remove uncertainty as to whether a Structured Equity Product qualifies as a ''going concern.'' The Exchange believes that the existing listing standards in Phlx Rule 803(a)(2) for traditional operating companies should sufficiently satisfy the ''going concern'' requirement for such other equity products that may become listed on the Exchange.

*Phlx Rule 806.* Phlx Rule 806 permits new issues of securities to be listed on the Exchange on the day that the registration statement is effective with the SEC, or upon effectiveness of the registration statement or equivalent document if registration with the SEC is not required. However, the issuer must meet certain initial listing criteria.

The proposed rule change would classify the two paragraphs of Phlx Rule 806 as (a) and (b). In addition, the proposed rule change would provide an exclusion for Structured Equity Products from Phlx Rule 806(b), which includes certain requirements relating to the distribution of new issues. This amendment would reflect the fact that distributors of Structured Equity Products generally make informal arrangements with dealers prior to going effective to provide assurance that sufficient creation units will be purchased from the issuer to meet the minimum listing requirements.

*Phlx Rule 807.* Phlx Rule 807 requires that securities approved for listing by the Exchange must be registered under

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposed rule change, Structured Equity Products are securities listed pursuant to the categories in Phlx Rule 803 entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. *See* Phlx Rule 803(f), (h), (k), (m) and (n).

[4] ''Going concern'' refers to the ability of the applicant to meet its current obligations with cash or other assets that can be quickly converted into cash. If the applicant is not able to meet its current obligations, the ability of that applicant being able to continue to operate is in doubt. *See* email from John Dayton, Director and Counsel, Phlx, to Ronesha Butler, Special Counsel, Division of Market Regulation, Commission, dated September 14, 2007.

Section 12(b) of the Act.[5] In addition, Phlx Rule 807 provides that securities registered under 12(g) of the Act,[6] or that have recently been the subject of a public offering registered under the Securities Act of 1933, may be registered for exchange trading under Section 12(b) of the Act through the filing of SEC Form 8–A. The proposed rule change would update Phlx Rule 807 to reflect the fact that registration of securities on Form 8–A automatically becomes effective within 30 days of filing. The Exchange states that the proposed amendments to Phlx Rule 807 are substantially similar to a corresponding provision in Section 210 of the American Stock Exchange (''Amex'') Company Guide.

*Phlx Rule 837.* Phlx Rule 837 requires listed companies to provide their shareholders with annual reports containing audited financial statements of the company and its subsidiaries at least 10 days prior to the annual meeting of shareholders and not later than four months after the close of the company's last preceding fiscal year. It further states that three copies of the report must be filed with the Exchange at the time it is distributed to shareholders. The proposed rule change would amend Phlx Rule 837 to provide that any annual report that is required to be sent to the Exchange will be deemed sent if it is filed on EDGAR. The Exchange states that this amendment would make Phlx Rule 837 consistent with the corresponding provision in Section 1101 of the Amex Company Guide.

*Fees.* For Structured Equity Products, the Exchange will charge an original listing fee of $5,000, then charge a $500 per month continuing listing fee for each month thereafter. For example, when an issuer lists a Structured Equity Products, the Exchange will bill the issuer $5,000 in the month of original listing. Beginning in the subsequent month, the Exchange will invoice the issuer $500 per month until such time as the product is delisted. Therefore, the maximum listing fee an issuer of a Structured Equity Products could pay in any one calendar year would be $10,500.[7] The Exchange believes that its proposed original listing fee and proposed continuing listing fee are reasonable in light of Amex's original listing fee[8] and annual fee[9] for Structured Equity Products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by modifying Exchange rules relating to the listing of Structured Equity Products. In addition, the Exchange believes that its proposal furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that the proposed original listing fee and proposed continuing listing fee are an equitable allocation of reasonable fees and other charges among Exchange members and issuers and other persons using its facilities.[13]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–60 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

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[5] 15 U.S.C. 78l(b).

[6] 15 U.S.C. 78l(g).

[7] The Exchange currently lists two Structured Equity Products, Pharmaceutical Basket Opportunity Exchangeable Securities and Biotechnology Basket Opportunity Exchangeable Securities. The issuer for these securities, Morgan Stanley, was invoiced the current annual continuing listing fee of $1,250 for the first product and $250 for the second product in January 2007. The Exchange believes that, for these two products, the proposed $500 per month continuing listing fee should begin in January 2008. The Exchange believes that it is reasonable and appropriate to begin charging the proposed continuing listing fee to Morgan Stanley for these two products in January 2008 (in contrast to new products that would begin to pay the proposed fee in the month subsequent to initial listing) because Morgan Stanley was invoiced the current annual continuing listing fee for 2007 and could have reasonably expected that this current fee would cover their obligation for these two products through the end of 2007.

[8] Amex's original listing fee for Structured Equity Products (Securities Listed under Section 107 (Other Products)) begins at $5,000 and may be as much as $45,000 based on the number of shares to be listed. *See* Section 140 of the Amex Company Guide.

[9] Amex's annual fee for Structured Equity Products (Securities Listed under Section 107 (Other Products)) begins at $15,000 and may be as much as $30,000 based on the number of shares outstanding. *See* Section 141 of the Amex Company Guide.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* e-mail from John Dayton, Director and Counsel, Phlx, to Christopher W. Chow, Special Counsel, Division of Market Regulation, Commission, dated October 5, 2007.

Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–60 and should be submitted on or before November 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Secretary.*

[FR Doc. E7–20358 Filed 10–15–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before December 17, 2007.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, 202–205–7530, *gail.hepler@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Gulf Coast Relief Financing Pilot Information Collection''.

*Description of Respondents:* Small Businesses devastated by Hurricanes Katrina and Rita.

*Form No's:* 2276 A/B/C, 2281, 2282.

*Annual Responses:* 500.

*Annual Burden:* 375.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandy Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, 202–205–7528, *sandra.johnston@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*..

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Personal Financial Statement.''

*Description of Respondents:* Applicants for an SBA Loan.

*Form No:* 413.

*Annual Responses:* 148,788.

*Annual Burden:* 223,182.

*Title:* ''Applications for Business Loans.''

*Description of Respondents:* Applicants for an SBA Loan.

*Form No's:* 4, 4Sch, 4-Short, 4I.

*Annual Responses:* 51,000.

*Annual Burden:* 530,000.

*Title:* ''Secondary Participation Guaranty Agreement.''

*Description of Respondents:* SBA participating Lenders.

*Form No's:* 1502, 1086.

*Annual Responses:* 14,000.

*Annual Burden:* 42,000.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. E7–20338 Filed 10–15–07; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 5959]**

### Bureau of Educational and Cultural Affairs EducationUSA Advising Services in Eurasia and Central Asia; Notice: Amendment to Original Request for Proposals (RFGP)

*Summary:* The United States Department of State, Bureau of Educational and Cultural Affairs, announces an amendment to the RFGP for EducationUSA Advising Services in Eurasia and Central Asia (ECA/A/S/A–08–06).

In Section II, in ''Award Information,'' Moldova should be included in the list of countries in Eurasia, as outlined in the Executive Summary of the RFGP, in which applicant organizations may propose to support educational advising. All other terms and conditions of the original solicitation remain the same.

For questions about this amendment, contact: Henry Scott, ECA/A/S/A, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–453–8883, fax: 202–453–8890, e-mail: *scotthc@state.gov.* Include a reference to Funding Opportunity Number ECA/A/S/A–08–06.

*Additional Information:* The announcement for EducationUSA Advising Services in Eurasia was originally announced in the **Federal Register**, Volume 72, Number 187 on September 27, 2007.

Dated: October 9, 2007.

**C. Miller Crouch,**

*Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E7–20369 Filed 10–15–07; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Actions on Special Permit Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (June to September 2007). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on October 10, 2007.

**Delmer F. Billings,**

*Director, Office of Hazardous Materials Special Permits and Approvals.*

[14] 17 CFR 200.30–3(a)(12).

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| **MODIFICATION SPECIAL PERMIT GRANTED** | | | | |
| 11666–M ..... | ..... | Alcoa, Inc., Pittsburgh, PA. | 49 CFR 173.240(b) ..... | To modify the special permit to authorize the transportation of graphite products, as a Class 9 material, in non-UN standard bulk packaging strapped to wooden pallets on flat railcars. |
| 12643–M ..... | RSPA–9066 | Northrop Grumman, Space Technology, Redondo Beach, CA. | 49 CFR 173.302 and 175.3 ... | To modify the special permit to authorize an increase in design volume for the pulse tube cooler up to 980 cc water capacity when shipped inside a strong, foam-filled shipping container. |
| 12306–M ..... | RSPA–5956 | Griffin Pipe Products Co., Lynchburg, VA. | 49 CFR part 172, subparts C, F. | To modify the special permit to authorize additional Class 3 hazardous materials. |
| 14287–M ..... | PHMSA–23247 | Troxler Electronic Laboratories, Inc., Research Triangle Park, NC. | 49 CFR 173.431 ..... | To modify the special permit to authorize cargo vessel as an additional mode of transportation. |
| 13179–M ..... | RSPA–14876 | Clean Harbors Environmental Services, Norwell, MA. | 49 CFR 173.21; 173.308 ..... | To modify the special permit to authorize the use of an alternative shipping description and hazard class for the Division 2.1 materials being transported to a disposal facility. |
| 13598–M ..... | RSPA–18706 | Jadoo, Folsom, CA ..... | 49 CFR 173.301(a)(1), (d) and (f). | To modify the special permit to authorize passenger carrying aircraft as an additional mode of transportation. |
| 7945–M ..... | ..... | Pacific Scientific, Duarte, CA. | 49 CFR 173.304(a)(1); 175.3 | To modify the special permit to authorize additional 2.2 hazardous materials in non-DOT specification cylinders. |
| 13556–M ..... | RSPA–17727 | Stericycle Lake Forest, IL. | 49 CFR 172.301(a)(1); 172.301(c). | To modify the special permit to authorize transportation in commerce of a Division 6.2 material in packagings marked with an outdated proper shipping name. |
| 12046–M ..... | RSPA–3614 | University of Colorado at Denver Health Sciences Center, Aurora, CO. | 49 CFR 171 to 178 ..... | To modify the special permit to authorize additional academic/health institutions which are affiliated with UCDHSC and located within a forty mile radius of the Aurora Campus. |
| 14250–M ..... | PHMSA–25473 | Daniels Sharpsmart, Inc., Dandenong, Australia. | 49 CFR 172.301(a)(1); 172.301(c). | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a Division 6.2 material in packagings marked with an unauthorized proper shipping name. |
| 12030–M ..... | RSPA–3389 | East Penn Manufacturing Company, Inc., Lyon Station, P A. | 49 CFR 173.159(h) ..... | To modify the special permit to authorize cargo vessel and cargo air as approved modes of transportation. |
| 12084–M ..... | RSPA–3941 | Honeywell International, Inc., Morristown, NJ. | 49 CFR 180.209 ..... | To modify the special permit to authorize the transportation in commerce of additional Division 2.2 gases in DOT 4B, 4BA and 4BW cylinders. |
| 12207–M ..... | RSPA–5047 | EMD Chemicals, Inc., Cincinnati, OH. | 49 CFR 171.1(a)(1); 172.200(a); 172.302(c). | To modify the special permit to increase the size of the containers from 250 gallons to 331 gallons and to increase the quantity allowed on a pallet from 24 to 35. |
| 12283–M ..... | RSPA–5767 | Interstate Battery of Alaska, Anchorage, AK. | 49 CFR 173 .159(c)(1); 173.159(c). | To modify the special permit to authorize medium density polyethylene boxes as authorized packaging. |
| 14333–M ..... | PHMSA–24382 | The Columbiana Boiler Co., Columbiana, OH. | 49 CFR 179.300–13(b) ..... | To modify the special permit to authorize the transportation in commerce of additional Division 6.1, Class 8 and other hazardous materials authorized in DOT Specification 4BW cylinder in DOT Specification 110A500W tank car tanks. |
| 14355–M ..... | PHMSA–25012 | Honeywell International Inc., Morristown, NJ. | 49 CFR 173.31(b)(3); 173.31(b)(4). | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of nine DOT Specification 112 tank cars without head and thermal protection for use in transporting certain Division 2.2 material by extending the date for retrofitting beyond July 1, 2006. |
| 11379–M ..... | ..... | TR W Occupant Safety Systems, Washington, MI. | 49 CFR 173.301(h), 173.302 | To modify the special permit for consistency with other air bag special permits. |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 11494–M ..... | ..... | ARC Automotive, Inc. (Former Grantee: Atlantic Research Corp. Automotive Products Group), Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the special permit for consistency with other air bag special permits. |
| 11506–M ..... | ..... | Autoliv ASP, Inc., Ogden, UT. | 49 CFR 173.301(h); 173.302 | To modify the special permit for consistency with other air bag special permits. |
| 11650–M ..... | ..... | Autoliv ASP, Inc., Ogden, UT. | 49 CFR 173.301; 173.302; 178.65–9. | To modify the special permit for consistency with other air bag special permits. |
| 11777–M ..... | RSPA–15902 | Autoliv ASP, Inc., Ogden, UT. | 49 CFR 173.301(h); 173.302 | To modify the special permit for consistency with other air bag special permits. |
| 11993–M ..... | RSPA–3100 | Key Safety Systems, Inc. (formerly BREED Tech.) Lakeland, FL. | 49 CFR 173.301(a)(1); 173.302a. | To modify the special permit for consistency with other air bag special permits. |
| 12122–M ..... | RSPA–4313 | ARC Automotive, Inc., Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the special permit for consistency with other air bag special permits. |
| 12844–M ..... | RSPA–10753 | Delphi Corporation, Vandalia, OH. | 49 CFR 173.301(a)(1); 173.302a(a)(1); 175.3. | To modify the special permit for consistency with other air bag special permits. |
| 13270–M ..... | RSPA–16489 | Takata Corporation Minato-Ku Tokyo, 106–8510. | 49 CFR 173.301(a); 173.302(a); 175.3. | To modify the special permit for consistency with other air bag special permits. |
| 14152–M ..... | PHMSA–20467 | Saes Pure Gas, Inc., San Luis Obispo, CA. | 49 CFR 173.187 ..... | To modify the special permit to authorize a change in the minimum and maximum pressures authorized in a non-DOT specification packaging for transporting certain quantities of metal catalyst, classed as Division 4.2. |
| 10019–M ..... | ..... | Structural Composites Industries, Pomona, CA. | 49 CFR 173.302(a)(1); 175.3 | To modify the special permit to change the retest period from 3 to 5 years for non-DOT specification fiber reinforced plastic full composite cylinders used for the transportation of Division 2.2 materials. |
| 6610–M ..... | ..... | Degussa Initiators, LLC, Elyria, OH. | 49 CFR 173.225(e) ..... | To modify the special permit to authorize the transportation in commerce of an additional Division 5.2 Type F material. |
| 10143–M ..... | ..... | Eurocom, Inc., Irving, TX | 49 CFR 173.306(a); 178.33a | To modify the exemption to authorize the transportation of additional Division 2.2 materials in a non-refillable non-DOT specification inside metal container. |
| 6530–M ..... | ..... | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.302(c) ..... | To modify the special permit to authorize an increase in the maximum age of certain DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders and authorize cargo vessel as a mode of transportation. |
| 11380–M ..... | ..... | Baker Atlas (a division of Baker Hughes, Inc.), Houston, TX. | 49 CFR 173.34(d); 178.37–5; 178.37–13; 178.37–15. | To modify the special permit to authorize a new non-DOT specification tank assembly design. |
| 14232–M ..... | PHMSA–22248 | Luxfer Gas Cylinders—Composite Cylinder Division, Riverside, CA. | 49 CFR 173.302a(a), 173.304a(a), and 180.205. | To modify the special permit to authorize an increase in service life to 30 years for certain carbon composite cylinders for transporting certain Division 2.1 and 2.2 gases. |
| 10590–M ..... | ..... | ITW/Sexton, Decatur, AL | 49 CFR 173.304(d)(3)(ii); 178.33. | To modify the special permit to authorize the transportation in commerce of certain Division 2.1 gases in non-DOT specification cylinder with a smaller diameter and wall thickness than currently authorized. |
| 12124–M ..... | RSPA–4309 | TOTAL Petrochemicals USA Inc., Pasadena, TX. | 49 CFR 173.242; 178.245–1(c); 178.245–1(d)(4). | To modify the special permit to authorize a new non-DOT specification portable tank comparable to a specification DOT 51 portable tank equipped with vertical outlet and no internal shutoff valve for use in transporting Division 4.2 and 4.3 hazardous materials. |
| 11917–M ..... | RSPA–2741 | ITW Sexton, Decatur, AL | 49 CFR 173.304(a) ..... | To modify the special permit to authorize a decrease in height of the non-DOT specification, non-refillable steel cylinders for the transportation of Division 2.1 materials. |
| 11383–M ..... | ..... | NASA, Washington, DC | 49 CFR 173.40(a) & (c); 173.158(b), (g), (h); 173.192(a); 173.336. | To modify the special permit to authorize additional trade names for UN1975. |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 13173–M ..... | RSPA–14003 | Dynetek Industries LTD, Calgary, AB. | 49 CFR 173.302(a); 175.3 ..... | To modify the special permit to authorize the manufacture, mark, sale and use of DOT–CFFC specification fully wrapped carbon fiber reinforced aluminum lined cylinders mounted in protective enclosures for use in transporting Division 2.1 and 2.2 hazardous materials. |
| 7235–M ..... | ..... | Luxfer Gas Cylinders, Riverside, CA. | 49 CFR 173.302(a)(1); 175.3 | To modify the special permit to authorize the transportation in commerce of an additional Division 2.2 gas in DOT-specification cylinders. |
| 12574–M ..... | RSPA–8318 | Luxfer Gas Cylinders, Riverside, CA. | 49 CFR 172.302(c)(2), (3), (4), (5); Subpart F of Part 180. | To modify paragraph 7.b.(2) of the special permit to authorize requalification of a certain type of composite cylinder that is manufactured with permanent composite bands without removal of these bands. These specification cylinders are used for life saving equipment such as aircraft slides which are required to have such bands. |
| 11859–M ..... | RSPA–2310 | Carleton Technologies Inc., New York, NY. | 49 CFR 178.65 ..... | To modify the special permit to authorize the transportation of an additional Division 2.2 gas in a non-DOT specification pressure vessel. |
| 14400–M ..... | PHMSA–25820 | Ultra Electronics Precision Air Systems, Alexandria, VA. | 49 CFR 172.301, 172.400, 173.306, 175.26. | To modify the special permit to correct what the company states was an editorial error and change the cylinder design operational life from 20 to 30 years. |
| 12087–M ..... | RSPA–3943 | LND, Inc., Oceanside, NY. | 49 CFR 172.101, Co. 9; 173.306; 175.3. | To modify the special permit to authorize a piece of equipment as a strong outer packaging. |
| 14392–M ..... | ..... | Department of Defense, Ft. Eustis, VA. | 49 CFR 172.101 Column (10B); 176.65, 176.83(a)(b)(g), 176.84(c)(2); 176.136; and 176.144(a). | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of explosives by vessel in an alternative stowage configuration. |
| 8915–M ..... | ..... | Matheson Tri Gas, East Rutherford, NJ. | 49 CFR 173.302a(a)(3); 173.301(d); 173.302a(a)(5). | To modify the special permit to authorize the transportation in commerce of additional Division 2.1 materials in DOT Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders. |
| 10656–M ..... | ..... | Conf. of Radiation Control Program Directors, Inc., Frankfort, KY. | 49 CFR 172.203(d); Part 172, Subparts C, D, E, F, G. | To modify the special permit to authorize additional modifying symbols to be added to the postal designation for the state of origin of the shipment. |
| 14466–M ..... | PHMSA 27095 | Northern Air Cargo, Anchorage, AK. | 49 CFR 172.101 Column (9B) | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. |
| 12274–M ..... | RSPA 5707 | Snow Peak, Inc, Clackamas, OR. | 49 CFR 172.301, 173.302a(b)(2), (b)(3) and (b)(4); 180.205(c) and (g) and 180.209(a). | To modify the special permit to authorize larger non-DOT specification nonrefillable inside containers. |
| 12571–M ..... | RSPA–8315 | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.304(a)(2); 180.209. | To modify the special permit to authorize markings on the sides of the trailers rather than on each individual tube. |
| 10885–M ..... | ..... | U.S. Department of Energy, Washington, DC. | 49 CFR 172.101 Col. 9(b); 172.204(c)(3); 173.27(b)(2); 173.27(f) Table 2; 175.30(a)(1); 173.27(b)(3). | To modify the special permit to authorize the transportation in commerce of additional hazardous materials and to provide relief from segregation by highway. |
| 13167–M ..... | ..... | ITT Industries Space Systems, LLC, Rochester, NY. | 49 CFR 173.301(f); 173.304 .. | To modify the special permit to authorize an additional non-DOT specification packaging. |
| 11993–M ..... | RSPA–3100 | Key Safety Systems, Inc. (formerly BREED Tech.), Lakeland, FL. | 49 CFR 173.301(a)(1); 173.302a. | To modify the special permit to authorize a new design pressure vessel. |
| 8627–M ..... | ..... | Nalco Energy Services, L.P., Naperville, IL. | 49 CFR 173.201; 173.202; 173.203. | To modify the special permit to authorize the transportation of Division 6.1, PG III materials in non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis. |
| 14415–M ..... | PHMSA–27694 | Prometheus International, Inc., Commerce, CA. | 49 CFR 173.21, 173.24, 173.27, 173.308, 175.5, 175.10, 175.30, 175.33. | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of gas and liquid fueled Prometheus lighters in special travel containers in checked luggage in commercial passenger aircraft. |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 7835–M ..... | ..... | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 177.848(d) ..... | To modify the special permit to authorize the use of an E track system as an approved method for securing cylinders transporting various hazardous materials. |
| 14382–M ..... | PHMSA–25482 | BOC Gases, Murray Hill, NJ. | 49 CFR 173.163, 180.209 ..... | To modify the special permit to specifically define the filling capacity of certain DOT Specification 3BN nickle cylinders containing either tungsten hexafluoride and hydrogen fluoride. |
| 14155–M ..... | PHMSA–20606 | American Promotional Events, Inc., Florence, AL. | 49 CFR 173.60; 178.516(b)(1) | To modify the special permit to authorize the transportation in commerce of certain fireworks in DOT specification single wall fiberboard boxes. |
| 12122–M ..... | RSPA–4313 | ARC Automotive, Inc., Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the special permit to allow machine welding as certified per CGA phamphlet C–3 requirements, and to grant relief from the marking requirements of CFR 178.65(i)(2)(viii) due to the limited size for the cylinders. |
| 7946–M ..... | ..... | Imaging & Sensing Technology, Horseheads, NY. | 49 CFR 173.306(6)(4); 175.3; 173.302. | To modify the special permit to authorize the transportation in commerce of additional Division 2.2 materials in non-DOT specification steel or aluminum pressure vessels contained in a radiation detector. |
| 12005–M ..... | RSPA–3233 | Pratt & Whitney Rocketdyne, Inc, Canoga Park, CA. | 49 CFR 173.302 ..... | To modify the special permit to authorize the transportation in commerce of a specially designed unit equipped with an unvented cylinder charged with xenon gas, Division 2.2, as part of a space station project. |
| 10631–M ..... | ..... | Dept of the Army—Surface Deployment and Distr. Command, Fort Eustis, VA. | 49 CFR 173.243; 173.244 ..... | To modify the special permit to authorize an additional shipping description and to update various paragraphs to coincide with the Hazardous Materials Regulations as currently written. |
| 11156–M ..... | ..... | Dyno Nobel, Inc., Salt Lake City, UT. | 49 CFR 173.62; 173.212(b) ... | To modify the special permit to authorize cargo vessel as an authorized mode of transport. |
| 13548–M ..... | RSPA–17545 | Wiley Rein LLP, Washington, DC. | 49 CFR 172.301(c), 173.159 | To modify the special permit to authorize the transportation in commerce of dry lead acid batteries without marking each package with the special permit number. |
| 14396–M ..... | PHMSA–25783 | Matheson Tri–Gas, Parsippany, NJ. | 49 CFR 173.192(a) ..... | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain Division 2.3 gases in certain DOT specification and non-DOT specification cylinders not normally authorized for cargo vessel transportation, for export only. |
| 10442–M ..... | ..... | Pratt & Whitney Rocketdyne (PWR) (Former Grantee: United Technologies Corporation), San Jose, CA. | 49 CFR 172.101; 173.65; 173.95; 173.154. | To modify the special permit to authorize the transportation in commerce of certain Division 1.1D and 1.3C waste materials in UN11G fiberboard boxes and UN11D plywood crates. |
| 14393–M ..... | PHMSA–25797 | Hamilton Sundstrand Windsor Locks, CT. | 49 CFR 173.306(e)(iii), (iv), (v) and (vi); 173.307(a)(4)(iv). | To modify the special permit to authorize an increase in the maximum size of the cylinders integrated in the cooling unit. |
| 11215–M ..... | ..... | Orbital Sciences Corporation, Mojave, CA. | 49 CFR Part 172, Subparts C, D; 172.101, Special Provision 109. | To modify the special permit to authorize the transportation in commerce of additional Division 1.4B, 1.4C explosives and Division 2.2 gases and to establish alternative landing sites. |
| 14488–M ..... | ..... | Sanofi Pasteur, Swiftwater, PA. | 49 CFR 173.24(b)(1) ..... | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of an influenza vaccine in a custom stainless steel batch reactor at a constant pressure of 1–5 psig by use of a cylinder feeding air into the reactor. |
| 12399–M ..... | RSPA–6769 | BOC Gases, Murray Hill, NJ. | 49 CFR 173.34(e)(1); 173.34(e)(3); 173.34(e)(4); 173.34(e)(8); 173.34(e)(14); 173.34(e)(15)(vi). | To modify the special permit to authorize removal of a test procedure for cylinders no longer in use by the applicant. |
| 14476–M ..... | PHMSA–27282 | BP Products North America, Inc. (formerly BP Amoco Oil), Texas City, TX. | 49 CFR 173.202, 173.203, 173.312, and 173.213. | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain hazardous materials in non-DOT specification heat exchanger pressure vessels and heat exchanger tube bundles. |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 14418–M ..... | PHMSA–26182 | Department of Defense, Ft. Eustis, VA. | 49 CFR 172.301; 172.400; 172.504(a). | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a water reactive material in special packging as Unitized Group Ration–Express (UGR–E) without being subject to Subchapter C of the Hazardous Materials Regulations. |
| 5022–M ..... | ..... | Alliant TechSystems Inc., Plymouth, MN. | 49 CFR 174.101(L); 174.104(d); 174.112(a); 177.834(l)(1). | To modify the special permit to authorize the transportation in commerce of an additional Division 1.2 explosive. |
| 14478–M ..... | PHMSA–28182 | Pilkington North America, Inc., Northwood, OH. | 49 CFR 178.603 ..... | To reissue the special permit originally issued on an emergency basis to authorize the alternative testing of custom manufactured containers that will be used to transport flammable solids, organic, n.o.s. (ferrocene). |
| 10043–M ..... | ..... | Texas Instruments, Inc., Dallas, TX. | 49 CFR 173.12 ..... | To modify the special permit to authorize residual amounts of various hazardous materials, Class 3 liquids, Class 8 materials, Division 6.1 materials, Division 5.1 materials, and ORM–A or ORM–B, in inside packaging having a maximum capacity of five gallons overpacked in outside non-DOT polyethylene bins of 30 cubic-foot capacity. |
| 11031–M ..... | PHMSA–2007–28184 | Amfuel, Magnolia, AZ .... | 49 CFR 173.241 ..... | |
| 13199–M ..... | PHMSA–14558 | Carrier Corporation, Houston, TX. | 49 CFR 173.302(c); 173.306(e)(1). | To modify the special permit to authorize a manufactured rigid internal structure in place of permanently affixing to a trailer. |
| 14313–M ..... | PHMSA–23868 | Airgas, Inc., Radnor, PA | 49 CFR 173.302a(b)(2), (3), (4) and (5), 180.205, 180.209, 172.203(a), 172.301(c). | To authorize the use of ultrasonic inspection as an alternative retest method for certain DOT specification cylinders and certain cylinders manufactured under a DOT special permit. |
| 11924–M ..... | RSPA–2744 | Packgen, Inc. (Former Grantee: Wrangler Corporation), Auburn, ME. | 49 CFR 173.12(b)(2)(i) ..... | To modify the special permit to authorize an additional design type for composite intermediate bulk containers (IBCs) and a change to the additional IBC drop test requirements. |
| 8554–M ..... | ..... | Austin Powder Company, Cleveland, OH. | 49 CFR 173.62; 173.240; 173.242; 173.93; 173.114a; 173.154; 176.83; 176.415; 177.848(d). | To modify the special permit to authorize the transportation in commerce of certain 1.5D explosives in the same vehicle with 5.1 oxidizers. |
| 11947–M ..... | RSPA–2901 | Patts Fabrication, Inc., Midland, TX. | 49 CFR 173.202; 173.203; 173.241; 173.242. | To modify the special permit to authorize the transportation of additional Class 3 and 8 material in non-DOT specification containers. |
| 12412–M ..... | RSPA–6827 | Cincinnati Pool Management, Inc., West Chester, OH. | 49 CFR 177.834(h); 172.203(a); 172.302(c). | To modify the special permit to allow for filling of an IBC without removing it from the motor vehicle on which it is transported while on private property. |
| 7657–M ..... | ..... | Welker Engineering Company, Sugar Land, TX. | 49 CFR 173.302(a)(1); 173.304(a)(1); 173.304(b)(1); 175.3; 173.201; 173.202; 173.203. | To modify the special permit to authorize the transportation in commerce of additional Division 2.1 gases and to authorize a change in the material of construction. |
| 11054–M ..... | ..... | Welker Engineering Company, Sugar Land, TX. | 49 CFR 178.36 Subpart C ..... | To modify the special permit to authorize a change in the material of construction. |
| 12531–M ..... | RSPA–7865 | Worthington Cylinder Corporation, Columbus, OH. | 49 CFR 173.302(a); 173.304(a); 173.304(d); 178.61(b); 178.61(f); 178.61(g); 178.61(i); 178.61(k). | To modify the special permit to authorize additional packing groups for already authorized hazardous materials. |
| 11592–M ..... | ..... | Amtrol Inc., West Warwick, RI. | 49 CFR 173.306(g) ..... | To modify the special permit to authorize the transportation in commerce of additional Division 2.2 gases. |
| 8723–M ..... | ..... | Dyno Nobel, Inc., Salt Lake City, UT. | 49 CFR 172.101; 173.62; 173.242; 176.83; 177.848. | To modify the special permit to authorize the transportation in commerce of an additional Division 5.1 hazardous material. |
| 8723–M ..... | ..... | Austin Powder Company, Cleveland, OH. | 49 CFR 172.101; 173.62; 173.242; 176.83; 177.848. | To modify the special permit to authorize the transportation in commerce of an additional Division 5.1 hazardous material. |
| 13169–M ..... | RSPA 13894 | Conocophillips Alaska, Inc., Anchorage, AK. | 49 CFR 172.101(9B) ..... | To modify the special permit to allow the transportation in commerce of certain Class 9 materials in UN 31A intermediate bulk containers which exceed quantity limitations when shipped by air. |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 14551–M ..... | PHMSA–2007–28928 | Aerojet, Redmond, WA .. | 49 CFR 173.56 ..... | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain explosives as Dangerous Good in Apparatus, UN3363 instead of the EX classification of Cartridge, power device, UN0323. |
| 14518–M ..... | ..... | Alliant Techsystems, Inc. (ATK) Plymouth, MN. | 49 CFR 173.62 ..... | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of Primers, cap type, UN0044 in non-DOT specification packaging when transported by private carrier for a distance of 10 miles or less. |
| 14533–M ..... | ..... | Skydance Helicopters of Northern Nevada, Inc., Minden, NV. | 49 CFR 172.101 Column (9B) | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain forbidden explosives by helicopter in remote areas of Utah, Oklahoma, Colorado and Wyoming to seismic drilling sites. |
| 14530–M ..... | ..... | Sandia National Laboratories Livermore, CA. | 49 CFR 173.242 ..... | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a PG III flammable liquid in alternative packaging (a Neutron Scatter Camera) by motor vehicle and cargo vessel. |
| 14419–M ..... | ..... | Voltaix, North Branch, NJ. | 49 CFR 173.181(a) ..... | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a Division 4.2 material in cylinders that are not authorized for that material. |
| 13280–M ..... | RSPA–16152 | Ovonic Hydrogen Systems, L.L.C., Rochester Hills, MI. | 49 CFR 173.301(a)(1), (d) and (f). | To modify the special permit to authorize different pressure relief devices per CGA standards. |
| | | **New Special Permit Granted** | | |
| 14382–N ..... | PHMSA–25482 | BOC Gases, Murray Hill, NJ. | 49 CFF 173.163, 180.209 ..... | To authorize the transportation in commerce of certain DOT Specification 3BN nickle cylinders containing either tungsten hexafluoride and hydrogen fluoride that are used interchangably without requalifying the cylinder. (modes 1, 2, 3) |
| 14383–N ..... | PHMSA–25483 | Dairy and Power Cooperative, Genoa, WI. | 49 CFR 173.416 ..... | To authorize the one-time, one-way transportation in commerce of a Class 7 used reactor pressure vessel in alternative packaging by motor vehicle and rail. (modes 1, 2) |
| 14384–N ..... | PHMSA–25485 | Matheson Tri-Gas, Parsippany, NJ. | 49 CFR 173.301(f)(1) ..... | To authorize the transportation in commerce of Propylene in DOT 3AA or 3AL specification cylinders utilizing an unbacked pressure relief device. (modes 1, 2, 3, 4) |
| 14387–N ..... | PHMSA–25632 | Gayston Corporation, Springboro, OH. | 49 CFR 173.302a, 173.304a, 180.209. | To authorize the manufacture, marking sale and use of non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders for shipment of certain Division 2.2 gases. (modes 1, 2, 3, 4, 5) |
| 14388–N ..... | PHMSA–25633 | ATK Thiokol, Inc., Brigham City, UT. | 49 CFR 173.62 ..... | To authorize the transportation in commerce of certain desensitized explosives in a non-DOT specification 40 cubic yard metal roll-off box by motor vehicle. (mode 1) |
| 14393–N ..... | PHMSA–25797 | Hamilton Sundstrand, Windsor Locks, CT. | 49 CFR 173.306(e)(iii), (iv), (v) and (vi); 173.307(a)(4)(iv). | To authorize the transportation in commerce of new supplemental cooling unit refrigeration machines with alternative safety devices as a component part of an aircraft. (modes 1, 2, 3, 4) |
| 14394–N ..... | PHMSA–25799 | Boeing Company Kennedy Space, Center, FL. | 49 CFR 173.302a ..... | To authorize the transportation in commerce of Nitrogen Tank Assemblies by motor vehicle between the Kennedy Space Center and Cape Canaveral Air Force Station not subject to the packaging requirements of the Hazardous Materials Regulations. (mode 1) |
| 14395–N ..... | PHMSA–25782 | Britz Fertilizers, Inc., Fresno, CA. | 49 CFR 172, 173, 177 ..... | To authorize the transportation in commerce of a liquid soil fumigant classed as Division 6.1, PG II, in a non-DOT specification bulk packaging mounted on a farm tractor or wagon, not subject to certain requirements of Parts 172 and 177 of the Hazardous Materials Regulations. (mode 1) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 14398–N ..... | PHMSA–25935 | Lyondell Chemical Company, Houston, TX. | 49 CFR 172.203(a); 179.13; 173.31(c)(1). | To authorize the transportation in commerce of Titanium tetrachloride in DOT-105J600W tank cars with a maximum gross weight on rail that exceeds the maximum limit of 263,000 pounds. (mode 2) |
| 14399–N ..... | PHMSA–25821 | Gas Cylinder Technologies Inc., Tecumseh, Ontario. | 49 CFR 173.302a ..... | To authorize the manufacture, marking, sale and use of non-DOT specification cylinders similar to DOT 39 for the transportation of non-flammable, non-liquefied gases. (modes 1, 2, 3, 4, 5) |
| 14400–N ..... | PHMSA–25820 | Ultra Electronics, Alexandria, VA. | 49 CFR 172.301, 172.400, 173.306, 175.26. | To authorize the transportation in commerce of Air, compressed in a non-DOT specification high pressure compressor system. (modes 1, 2, 3, 4) |
| 14405–N ..... | PHMSA–26003 | True Drilling LLC, Casper, WY. | 49 CFR 173.5a ..... | To authorize the transportation in commerce of certain Class 3 hazardous materials in a truck-mounted meter prover without draining to 10% capacity. (mode 1) |
| 14407–N ..... | PHMSA–25999 | ITW Sexton, Decatur, AL | 49 CFR 173.304a ..... | To authorize the manufacture, marking, sale and use of a non-DOT specification cylinder to be used for the transportation in commerce of certain Division 2.2 materials. (modes 1, 2, 3, 4) |
| 14410–N ..... | ..... | Voltaix, LLC, North Branch, NJ. | 49 CFR 180.209(a) ..... | To authorize the transportation in commerce of DOT Specification 4BW cylinders that are in dedicated use for trimethylchlorosilane, dimethyldichlorosilane and trimethylsilane service and have been visually inspected instead of hydrostatically tested for periodic requalification. (modes 1, 2) |
| 14411–N ..... | PHMSA–26097 | OPW Fueling Components, Cincinnati, OH. | 49 CFR 173.150 ..... | To authorize the transportation in commerce of gasoline nozzles (fueling components) containing the residue of gasoline. (modes 1, 2) |
| 14422–N ..... | PHMSA–26307 | Patterson Logistics, Boone, IA. | 49 CFR 172.101 Hazardous Materials Table, column 8A. | To authorize the transportation in commerce of 4 ounces or less of ethyl chloride as a consumer commodity. (modes 1, 2, 3, 4, 5) |
| 14424–N ..... | PHMSA–26308 | Chart Industries, Inc., Ball Ground, GA. | 49 CFR 172.203(a); 177.834(h). | To authorize filling and discharging of a DOT Specification 4L cylinder with carbon dioxide, refrigerated liquid without removal from the vehicle. (mode 1) |
| 14427–N ..... | PHMSA–26246 | The Procter & Gamble Company, Cincinnati, OH. | 49 CFR 173.306(a) and 173.306(a)(3)(v). | To authorize the transportation in commerce of Division 2.2 aerosols in non-DOT specification plastic containers not subject to the hot water bath test. (modes 1, 2, 3, 4, 5) |
| 14429–N ..... | PHMSA–26345 | Schering-Plough, Union, NJ. | 49 CFR 173.306(a)(3)(v) ..... | To authorize the manufacture, marking, sale and use of a bag-on-valve spray packaging similar to an aerosol container without requiring the hot water bath test. (modes 1, 2, 3, 4, 5) |
| 14437–N ..... | PHMSA–26551 | The Columbiana Boiler Co., Columbiana, OH. | 49 CFR 179.300 ..... | To authorize the manufacture, marking, sale and use of non-DOT specification multi-unit tank car tanks similar to DOT 106A for transportation of hazardous materials. (mode 2) |
| 14440–N ..... | PHMSA–26545 | Aiolos Laboratories AB, Karlstad, Sweden. | 49 CFR 173.306(a)(3)(v) ..... | To authorize the transportation in commerce of Division 2.1 hazardous materials in certain non-refillable aerosol containers which are not subject to the hot water bath test. (modes 1, 2, 3, 4, 5) |
| 14441–N ..... | PHMSA–27490 | B.J. Alan Company, Youngstown, OH. | 49 CFR 173.60 ..... | To authorize the transportation in commerce of certain fireworks in non-DOT specification packagings when returned to the distributor. (mode 1) |
| 14443–N ..... | PHMSA–26540 | Ball Aerospace & Technologies Corp., Boulder, CO. | 49 CFR 173.301(a)(1) and (a)(3). | To authorize the transportation in commerce of helium by motor vehicle in a non-DOT specification packaging. (mode 1) |
| 14445–N ..... | PHMSA–26547 | Crown Packaging Technology, Alsip, IL. | 49 CFR 173.304(e) and 173.306(a). | To authorize the manufacture, marking, sale and use of a non-DOT specification inside metal container conforming in part with DOT-Specification 2Q for use in transporting R–134a (1,1,2 tetrafluoroethane). (modes 1, 2, 3, 4) |
| 14447–N ..... | ..... | California Tank Lines, Inc., Stockton, CA. | 49 CFR 177.834 ..... | To authorize cargo tanks to remain connected while standing without the physical presence of an unloader when using a specially designed hose. (mode 1) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 14452–N ..... | PHMSA–26874 | Martek Biosciences Corporation, Winchester, KY. | 49 CFR 173.241 ..... | To authorize the transportation in commerce of certain Division 4.2 hazardous materials in non-DOT specification bulk containers. (mode 1) |
| 14453–N ..... | PHMSA–26875 | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 180.209 ..... | To authorize the ultrasonic testing of DOT–3A, DOT–3AA 3AX, 3AAX and 3T specification cylinders for use in transporting Division 2.1, 2.2 or 2.3 material. (modes 1, 2, 3) |
| 14454–N ..... | PHMSA–26876 | Bozel (Europe) France .. | 49 CFR Subparts D, E and F of Part 172; 173.24(c) and Subparts E and F of Part 173.. | To authorize the transportation in commerce of a specially designed device consisting of metal tubing containing certain hazardous materials to be transported as essentially unregulated. (modes 1, 2, 3) |
| 14455–N ..... | PHMSA–26877 | EnergySolutions, LLC, Columbia, SC. | 49 CFR 173.403 and 173.427(b)(1). | To authorize the transportation in commerce of Class 7 surface contaminated objects in non-DOT specification packaging. (modes 1, 2, 3) |
| 14458–N ..... | PHMSA–26873 | Hawaii Superferry, Honolulu, HI. | 49 CFR 172.101 Column (10A). | To authorize the transportation in commerce of limited quantities of Class 3, Class 9 and Division 2.1 hazardous materials being stowed on and below deck on passenger ferry vessels transporting motor vehicles, such as recreational vehicles, with attached cylinders of liquefied petroleum gas. (mode 6) |
| 14460–N ..... | PHMSA–26872 | Real Sensors, Inc., Hayward, CA. | 49 CFR Part 172, subparts B, C, D, E and F. | To authorize the transportation in commerce of permeation devices with a maximum volume of 6cc containing anhydrous ammonia. (modes 1, 2, 3, 4) |
| 14462–N ..... | PHMSA–27094 | 3M Company, St. Paul, MN. | 49 CFR 171.2(k) ..... | To authorize the transportation in commerce of a liquefied gas that does not meet any Class 2 definition as a Division 2.2 compressed gas. (modes 1, 2, 3, 4, 5) |
| 14467–N ..... | PHMSA–27190 | Brenner Tank, LLC, Fond Du Lac, WI. | 49 CFR 178.345–2 ..... | To authorize the manufacture, marking, sale and use of DOT 400 series cargo tanks using alternative materials of construction, specifically duplex stainless steels. (mode 1) |
| 14469–N ..... | PHMSA–27148 | Space Systems/Loral, Palo Alto, CA. | 49 CFR 172.101 column (9B) | To authorize the transportation in commerce of anhydrous ammonia by cargo aircraft exceeding the quantities authorized in Column (9B). (mode 4) |
| 14471–N ..... | ..... | University of Colorado Hospital, Denver, CO. | 49 CFR 173.12 ..... | To authorize the one-way transportation in commerce of various hazardous materials in lab packs to facilitate relocation of laboratory facilities. (mode 1) |
| 14472–N ..... | ..... | University of Colorado Hospital, Denver, CO. | 49 CFR 173.196; 178.609 ..... | To authorize the one-way transportation in commerce of infectious substances other than Risk Group 4 in specially designed packaging (freezers). (mode 1) |
| 14474–N ..... | ..... | OSI Environmental Inc., Eveleth, MN. | 49 CFR 173.243 ..... | To authorize the transportation in commerce of petroleum crude oil in non-DOT specification cargo tanks, in a spill mitigation effort. (mode 1) |
| 14475–N ..... | PHMSA–27253 | Chemtura Corporation, Middlebury, CT. | 49 CFR 173.24a(a)(1) ..... | To authorize the transportation in commerce of certain packagings containing Consumer commodity, ORM–D with closures that are not oriented in the upward direction. (modes 1, 2) |
| 14479–N ..... | PHMSA–27692 | Medical Waste Institute, Washington, DC. | 49 CFR 172.301(a); 172.301(c); 172.312(a)(2). | To authorize the use of containers marked with an alternative shipping name for UN3291. (mode 1) |
| 14480–N ..... | PHMSA–28525 | REC Advanced Silicon Materials LLC, Silver Bow, MT. | 49 CFR 173.301(1)(iii)(2) ..... | To authorize the transportation in commerce of certain DOT specification cylinders and cylinders manufactured to a foreign specification without pressure relief devices. (modes 1, 3) |
| 14482–N ..... | PHMSA–27691 | Classic Helicopters, Woods Cross, UT. | 49 CFR 172.204(c)(3); 173.27(b)(2)(3); 175.30(a)(1). | To authorize the transportation of certain Division 1.2 explosives by cargo aircraft (helicopter). (mode 4) |
| 14484–N ..... | PHMSA–27696 | E Ink Corporation, Cambridge, MA. | 49 CFR 173.202(a), 173.202(c), 173.28(b)(2). | To authorize the manufacture, marking, sale and use of reusable stainless steel vessels for the transportation in commerce of certain Class 3 hazardous materials. (mode 1) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 14485–N ..... | PHMSA–27689 | Constellation Technology Corporation. | 49 CFR Part 172 Subpart E and F; Part 174 except 174.24, Part 176 except 176.24 and Part 177 except 177.817; Sections 173.302a, 173.306(b)(4) and 175.3. | To authorize the manufacture, marking, sale and use of non-DOT specification cylinders for the transportation in commerce of certain Division 2.1 and 2.2 gases. (modes 1, 2, 3, 4, 5) |
| 14487–N ..... | PHMSA–27829 | Osmose Inc., Millington, TN. | 49 CFR 173.212 ..... | To authorize the one-way transportation in commerce of Arsenic trioxide, Division 6.1, PG II in non-DOT specification drums. (mode 1) |
| 14492–N ..... | PHMSA–27836 | Tankbouw Rootselaar B. V., The Netherlands. | 49 CFR 178.276(a)(1) and (a)(2). | To authorize the manufacture, mark, sale and use of non-DOT specification portable tanks conforming with the 2004 edition (+2005 Addenda) of Section VIII, Division 1 of the ASME Code for the transportation in commerce of certain Division 2.1 and 2.2 hazardous materials. (modes 1, 2, 3) |
| 14493–N ..... | PHMSA–27835 | Thermacore, Inc., Lancaster, PA. | 49 CFR 173.306(e) ..... | To authorize the transportation in commerce of non-DOT specification containers (heat pipes) containing anhydrous ammonia for use in specialty cooling applications. (modes 1, 2, 3, 4) |
| 14494–N ..... | PHMSA–27834 | Airgas, Inc., Cheyenne, WY. | 49 CFR 172.202, 172.301(a) and 172.301(c). | To authorize the transportation in commerce of cylinders that are marked with obsolete proper shipping descriptions to allow for their return. (modes 1, 2, 3, 4, 5) |
| 14495–N ..... | PHMSA–27839 | GE Healthcare, Arlington Heights, IL. | 49 CFR 173.302(a), 175.3 ..... | To authorize the transportation in commerce of a Division 2.2 gas in a non-DOT specification cylinder. (modes 1, 4) |
| 14496–N ..... | PHMSA–27831 | Oilphase Division, Schlumberger Eval. & Production (UK) Ltd., Dyce, Aberdeen, UK. | 49 CFR 173.201(c), 173.202(c), 173.203(c), 173.301(f), 173.302(a), 173.304(a), 173.304(d), 175.3. | To authorize the manufacture, marking, sale and use of non-DOT specification cylinders similar to a DOT 3A for the transportation of Division 2.1 and 2.3 gases. (modes 1, 2, 3, 4) |
| 14502–N ..... | PHMSA–27937 | Ropak Southeast, LaGrange, GA. | 49 CFR 178.3(a)(1), 178.502(a)(1). | To authorize the transportation in commerce of approximately 3900 UN 1H1 drums that were incorrectly marked as jerricans (3H1). (modes 1, 2, 3, 4, 5) |
| 14503–N ..... | PHMSA–27938 | Gay Lea Foods Co-operative Limited, Guelph. | 49 CFR 173.306(b)(1) ..... | To authorize the transportation in commerce of an aerosol foodstuff in a nonrefillable metal container similar to a DOT Specification 2P. (modes 1, 2, 3, 4, 5) |
| 14506–N ..... | PHMSA–28187 | Jacobs Engineering, Anchorage, AK. | 49 CFR 173.4(a)(1)(i) ..... | To authorize the transportation in commerce of a Class 3 material in a non-DOT Specification packaging. (modes 1, 2, 3, 4, 5, 6) |
| 14509–N ..... | PHMSA–28225 | Pacific Consolidated Industries, LLC, Riverside, CA. | 49 CFR 173.302(a)(1), 173.304a(a)(1),175.3. | To authorize the manufacturing, marking, sale and use of brass-lined filament wound cylinders for use in transporting certain Division 2.1 and 2.2 gases. (modes 1, 2, 3, 5) |
| 14510–N ..... | PHMSA–28186 | Clean Earth Systems, Inc., Tampa, FL. | 49 CFR 173.12(b), 173.12(b)(2)(i). | To authorize the transportation in commerce by motor vehicle of certain hazardous materials in UN4G fiberboard boxes lined with polyethylene. (mode 1) |
| 14513–N ..... | PHMSA–28183 | Hazmat Services, Inc., Anaheim, CA. | 49 CFR 173.12(b)(2)(ii), 172.101(b)(1),173.12(b)(1). | To authorize the transportation in commerce of chemically-compatible hazardous materials with different hazard classes in lab packs. (mode 1) |
| 14517–N ..... | PHMSA–28269 | The Children's Hospital, Denver, CO. | 49 CFR 173.196; 178.609 ..... | To authorize the one-way transportation in commerce of infectious substances other than Category A in specially designed packaging (freezers). (mode 1) |
| 14519–N ..... | PHMSA–28467 | Commodore Advanced Sciences, Inc., Richland, WA. | 49 CFR 173.244 ..... | To authorize the one-time, one-way transportation in commerce of solidified sodium metal (UN1428) in alternative packaging from Mobile, Alabama to Oakridge, Tennessee. (modes 1, 2) |
| 14522–N ..... | PHMSA–28464 | Toyota Motor Sales, U.S.A., Inc., Torrance, CA. | 49 CFR Part 172 and Part 173. | To authorize the transportation in commerce of certain Class 8 and 9 hazardous materials across a public road within Toyota's facility to be transported as non-regulated. (mode 1) |
| 14523–N ..... | PHMSA–28469 | Pacific Bio-Material Management, Inc., Fresno, CA. | 49 CFR 173.196(b); 173.196(e)(2)(ii). | To authorize the transportation in commerce of certain infectious substances in specially designed packaging (freezers). (mode 1) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|---|
| 14524–N ..... | PHMSA–28470 | Oxia U.S. Ltd., Las Vegas, NV. | 49 CFR 173.306(a)(1) ..... | To authorize the transportation in commerce of a DOT Specification 3AL cylinder containing 90% oxygen and 10% nitrogen as consumer commodity when the capacity does not exceed 5.2 ounces transported by motor vehicle. (mode 1) |
| 14525–N ..... | PHMSA–28465 | Alcoa Inc., Pittsburgh, PA. | 49 CFR Parts 171–180 except shipping papers and ID number marking. | To authorize the transportation in commerce of certain used diatomaceus earth filter material not subject to the Hazardous Materials Regulations, except for shipping papers and certain marking requirements when transported by motor vehicle. (mode 1) |
| 14527–N ..... | PHMSA–29269 | FedEx Express, Memphis, TN. | 49 CFR 175.33 ..... | To authorize the air transportation of certain hazardous materials without identifying the packaging type on the Notification to Pilot in Command. (modes 4, 5) |
| 14528–N ..... | PHMSA–28270 | Halpern Import Company, Inc., Atlanta, GA. | 49 CFR 173.304; 173.306 ..... | To authorize the transportation in commerce of butane in approximately 20,016 non-DOT specification, non-refillable inner receptacles containing butane in non-UN standard outer packagings. |
| 14532–N ..... | PHMSA–28696 | Degussa Corporation, Parsippany, NJ. | 49 CFR 173.31(d)(i)(vi); 172.302(c). | To authorize the transportation in commerce of certain Division 5.1 hazardous materials in tank cars that have not had their rupture disk removed for inspection. (mode 2) |
| 14545–N ..... | PHMSA–28830 | UCLA Film and Television Archive, Hollywood, CA. | 49 CFR 173.183 ..... | To authorize the one-way transportation in commerce of cellulose nitrate motion picture film from two locations in Hollywood, CA to climate-controlled film vaults in Santa Clarita, CA in alternative packaging. (mode 1) |
| 14548–N ..... | PHMSA–28912 | International Air Transport Association, Montreal. | 49 CFR 175.10(15) ..... | To authorize the transportation in commerce of wheelchairs or other battery-powered mobility aids equipped with a non-spillable battery when carried as checked baggage, provided the battery meets certain provisions in 49 CFR, the battery terminals are protected from short circuits, and the battery is securely attached to the wheelchair or mobility aid. (mode 5) |
| 14555–N ..... | ..... | Norton Sound Economic Development Corporation, Nome, AK. | 49 CFR 173.159(c)(1) ..... | To authorize the one-way transportation in commerce of a forklift battery pack by air in an area of Alaska where no other means of transportation is practicable. (mode 5) |
| 14564–N ..... | PHMSA–29144 | Bealine Service Co., Inc., Pasadena, TX. | 49 CFR 173.33(a)(3) ..... | To authorize the one-time, one-way transportation in commerce of an MC 412 DOT–specification cargo tank that was filled with a Class 9 hazardous material when it was past due for inspection. (mode 1) |
| **EMERGENCY SPECIAL PERMIT GRANTED** | | | | |
| EE 14242–M | PHMSA–25164 | EPA Region 6 (Louisiana), Dallas, TX. | 49 CFR 171–180 ..... | To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina and Hurricane Rita disaster areas of Louisiana under conditions that may not meet the Hazardous Materials Regulations. (modes 1, 2, 3, 4) |
| EE 14167–M | PHMSA–20669 | FRA ..... | 49 CFR 173.26, 173.314(c), 179.13 and 179.100–12(c). | To modify the special permit for consistency with other similar special permits. (mode 2) |
| EE 14391–M | ..... | W.E.L., Inc., Concord, VA. | 49 CFR 173.28(a), 173.35(a) and 173.35(b). | To modify the special permit to reflect the new abatement location. (mode 1) |
| EE 12920–M | RSPA–11638 | Epichem, Inc. ..... | 49 CFR 173.181(c) ..... | To modify the special permit to authorize a 68.3mm center opening in the top head of the containers authorized in the special permit. (modes 1, 3) |
| EE 13169–M | RSPA 13894 | Conocophillips Alaska, Inc., Anchorage, AK. | 49 CFR 172.101(9B) ..... | To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 9 materials in UN 31A intermediate bulk containers which exceed quantity limitations when shipped by air. (mode 4) |
| EE 12995–M | PHMSA–12220 | Dow Chemical Company, Midland, MI. | 49 CFR 173.306(a)(3)(v) ..... | To modify the exemption to authorize the use of the DOT 2Q specification container with an increased container pressure not to exceed 180 psig at 55 degrees C. (modes 1, 2, 3, 4) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
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| EE 14412–M | PHMSA–26098 | BP Exploration Alaska, Anchorage, AK. | 49 CFR 173.201 | To modify the special permit to authorize cargo vessel as an authorized mode of transportation. (mode 1) |
| EE 14418–M | PHMSA–26182 | Department of Defense, Ft. Eustis, VA. | 49 VFR 172.301; 172.400; 172.504(a). | (modes 1, 4, 5) |
| EE 14418–M | PHMSA–26182 | Department of Defense, Ft. Eustis, VA. | 49 CFR 172.301; 172.400; 172.504(a). | To correct typos in paragraph 2 and 7.b(2) (modes 1, 4, 5) |
| EE 10427–M | | Astrotech Space Operations, Inc., Titusville, FL. | 49 CFR 173.61(a); 173.301(f); 173.302a; 173.336; 177.848(d). | To modify the exemption to authorize a quantity increase from 700 pounds to 1200 pounds of a Division 2.2 material transported on the same motor vehicle with various hazardous materials. (mode 1) |
| EE 14414–M | | Sea Launch, Long Beach, CA. | 49 CFR Part 172 Subparts C, D, E and F; 173.62; Part 173 Subparts E, F and G. | To modify the special permit to authorize any charter flight that conforms and is certified to FAA Part 129 and to expand the site of Long Beach to include metro LA airports. (modes 1, 3, 4) |
| EE 12668–M | PHMSA–9385 | Tri-Wall, A Weyerhaeuser Business, Exeter, CA. | 49 CFR 173.12(b)(2)(i) | To modify the special permit to authorize cargo vessel as an approved mode of transportation. (modes 1, 3) |
| EE 14463–M | PHMSA–26976 | Korean Air Lines Co., Ltd., Los Angeles, CA. | 49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27; 175.30(a)(1), 175.320. | To modify the special permit to correct the maximum net weight of explosives. (mode 4) |
| EE 12135–M | RSPA–4418 | Daicel Safety Systems, Inc. Hyogo Prefecture, 671–1681. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the special permit to authorize a new design of non-DOT specification cylinders (pressure vessels) for use as components of automobile vehicle safety systems to prevent severe economic loss. (modes 1, 2, 3, 4) |
| EE 14399–M | PHMSA–25821 | Gas Cylinder Technologies Inc., Tecumseh, Ontario. | 49 CFR 173.302a | To modify the special permit to specifically authorize the transportation in commerce of oxygen, compressed by air. (modes 1, 2, 3, 4, 5) |
| EE 14431–M | PHMSA–26347 | Kraton Polymers, Belpre, OH. | 49 CFR 173.227(c) | To modify the special permit to authorize a drum rated to the PG II level for the transportation of ethylene dibromide. (modes 1, 2, 3) |
| EE 11650–M | | Autoliv ASP, Inc., Ogden, UT. | 49 CFR 173.301; 173.302; 178.65–9. | To modify the special permit for consistency with other air bag special permits. (modes 1, 2, 3, 4) |
| EE 14466–M | PHMSA 27095 | Alaska Pacific Powder Company, Anchorage, AK. | 49 CFR 172.101 Column (9B) | To modify the special permit by specifying the specific sections for which segregation applies. (mode 4) |
| EE 10885–M | | U.S. Department of Energy, Washington, DC. | 49 CFR 172.101 Col. 9(b); 172.204(c)(3); 173.27(b)(2); 173.27(f) Table 2; 175.30(a)(1); 172.27(b)(3). | To modify the special permit to authorize the transportation in commerce of additional hazardous materials and to provide relief from segregation by highway. (mode 4) |
| EE 14466–M | PHMSA 27095 | Alaska Pacific Powder Company, Anchorage, AK. | 49 CFR 172.101 Column (9B) | To modify the special permit to allow the transportation in commerce of additional Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4) |
| EE 11536–M | | Boeing Company, The, Los Angeles, CA. | 49 CFR 173.102 Spec. Prov, 101; 173.24(g); 173.62; 173.202; 173.304; 175.3. | To modify the special permit to authorize an additional Class 1 material and make minor editorial changes. (modes 1, 3, 4) |
| EE 14580–M | | LifeSparc, Hollister, CA | 49 CFR 173.56(b) | To modify the special permit by adding an additional proper shipping description and related packaging. (mode 1) |
| EE 14380–N | | Northern Air Cargo, Inc., Anchorage, AK. | 49 CFR 172.101 Column (9B) | To authorize the one-time one-way transportation in commerce of anhydrous ammonia in two DOT–4AA 480 specification cylinders aboard a cargo-only aircraft. |
| EE 14381–N | PHMSA–25456 | Ball Corporation, Elgin, IL. | 49 CFR 178.33a–8 | To authorize the manufacture, mark, sale and use of an existing inventory of approximately 438,000 DOT-specification 2P inner metal containers that were inadvertently marked 2Q in addition to the 2P marking. (modes 1, 2, 3, 4, 5) |
| EE 14389–N | PHMSA–25607 | The Boeing Company, Huntington Beach, CA. | 49 CFR 173.302 | To authorize the one-way transportation in commerce of the NEXTSat satellite containing a non-DOT specification pressure vessel and a lithium ion battery by motor vehicle. |
| EE 14390–N | | Korean Air Lines Co., Ltd., Los Angeles, CA. | 49 CFR 171.101172.101, 172.204(c)(3), 173.27; 175.30(A)(1), 175.320. | To authorize the transportation of certain Division 1.1D and 1.1J explosives which are forbidden for shipment by cargo-only aircraft. (mode 4) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
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| EE 14391–N | ..... | W.E.L., Inc., Concord, VA. | 49 CFR 173.28(a), 173.35(a) and 173.35(b). | To authorize the one-time, one-way transportation in commerce by motor vehicle of Sodium hydrosulfite in intermediate bulk containers that have been damaged by fire. (mode 1) |
| EE 14396–N | PHMSA–25783 | Matheson Tri-Gas, Parsippany, NJ. | 49 CFR 173.192(a) ..... | To authorize the transportation in commerce of Arsine, Division 2.3, in certain DOT specification and non-DOT specification cylinders not normally authorized for cargo vessel transportation, for export only. (modes 1, 3) |
| EE 14404–N | PHMSA–26005 | Miller Transporters, Inc., Jackson, MS. | 49 CFR 173.243 ..... | To authorize the emergency transportation in commerce of a tank that at one time conformed to the MC–312 specifications, but due to substandard modifications made to the overturn protection and to the rear end protection to allow for the addition of piping and valves, it may no longer be in compliance with DOT specifications. (mode 1) |
| EE 14412–N | PHMSA–26098 | BP Exploration Alaska, Anchorage, AK. | 49 CFR 173.201 ..... | To authorize the emergency transportation in commerce of a pipeline pipe specimen containing a Class 3 hazardous material by motor vehicle. (mode 1) |
| EE 14415–N | PHMSA–27694 | Prometheus International, Inc., Commerce, CA. | 49 CFR 173.21, 173.24, 173.27, 173.308, 175.5, 175.10, 175.30, 175.33. | Emergency exemption request to authorize the transportation of gas and liquid fueled Prometheus lighters in special travel containers in checked luggage in commercial passenger aircraft. (mode 5) |
| EE 14416–N | PHMSA–26181 | Sandia National Laboratories, Albuquerque, NM. | 49 CFR 173.301(f) ..... | To authorize the transportation in commerce of the Advance Flight Telescope (AFT) Payload containing ICC 3A and DOT 3AA specification cylinders containing nitrogen without pressure relief devices. (modes 1, 4, 5) |
| EE 14418–N | PHMSA–26182 | Department of Defense, Ft. Eustis, VA. | 49 CFR 172.301; 172.400; 172.504(a). | To authorize the transportation in commerce of a water reactive material in special packaging as Unitized Group Ration-Express (UGR–E) without being subject to Subchapter C of the Hazardous Materials Regulations. (modes 1, 4, 5) |
| EE 14419–N | ..... | Voltaix, LLC, Branchburg, NJ. | 49 CFR 173.181(a) ..... | To authorize the transportation in commerce of pyrophoric liquid n.o.s. in cylinders that are not authorized for that material. (mode 1) |
| EE 14421–N | PHMSA–26247 | Lancaster Laboratories, Inc., Lancaster, PA. | 49 CFR 173.4 ..... | To authorize the transportation in commerce of Nitric acid other than red fuming with 20% or less nitric acid as small quantities under the provision of 49 CFR 173.4. (mode 4) |
| EE 14431–N | PHMSA–26347 | Kraton Polymers, Belpre, OH. | 49 CFR 173.227(c) ..... | To authorize the transportation in commerce of ethylene dibromide in alternative packaging. (modes 1, 2, 3) |
| EE 14435–N | PHMSA–26500 | Tetra Technologies, Inc., The Woodlands, TX. | 49 CFR 173.249(c) ..... | To authorize the one-time, one-way transportation of Bromine in a DOT Specification IM101 portable tank that is not filled between 88 and 92% of capacity. (mode 1) |
| EE 14450–N | ..... | Nalco Energy Services LP, Naperville, IL. | 49 CFR 177.834 ..... | To authorize additional time for retrofitting IBCs to meet the valving requirements of DOT–SP 12412 which authorizes the unloading of IBCs without removal of the transport vehicle. (mode 1) |
| EE 14451–N | ..... | Halpern Import Company, Inc., Atlanta, GA. | 49 CFR 173.306(a) ..... | To authorize the transportation in commerce of cans of lighter refills, reclassed as consumer commodities, in non-DOT specification packages. The containers exceed the 4 ounce capacity limitation. (mode 1) |
| EE 14459–N | ..... | The Library of Congress, WPAFB, OH. | 49 CFR 173.212(b) in that a non-DOT specification package is authorized; and 173.301(c) in that marking the special permit number on the package is waived. | To authorize the one-time transportation in commerce of certain nitrate cellulose film packaged in metal cans and shrink-wrapped on pallets. (mode 1) |
| EE 14463–N | PHMSA–26976 | Korean Air Lines Co., Ltd., Los Angeles, CA. | 49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27; 175.30(a)(1), 175.320. | To authorize the transportation of certain explosives which are forbidden for shipment by cargo-only aircraft. (mode 4) |
| EE 14464–N | PHMSA–26975 | Agmark Foods, Nashville, TN. | 49 CFR 171.14(d)(4) and 173.32(c)(2). | To authorize the transportation in commerce of Ethyl alcohol solution in certain ISO portable tanks that do not meet Portable Tank Code T–3. (mode 1) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
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| EE 14466–N | PHMSA–27095 | Northern Air Cargo, Inc., Anchorage, AK. | 49 CFR 172.101 Column (9B) | To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4) |
| EE 14476–N | PHMSA–27282 | BP Products North America, Inc. (formerly BP Amoco Oil), Texas City, TX. | 49 CFR 173.202, 173.203, 173.312, and 173.213. | To authorize the transportation in commerce of certain hazardous materials in non-DOT specification heat exchanger pressure vessels and heat exchanger tube bundles. (mode 1) |
| EE 14477–N | PHMSA–27345 | Honeywell International, Inc., Morristown, NJ. | 49 CFR 173.40(b); 173.301(f) | To authorize the one-way transportation in commerce of approximately 29 DOT 3AA–2015 cylinders overfilled with a Division 2.3 Hazard Zone B hazardous material. (mode 1) |
| EE 14478–N | PHMSA–28182 | Pilkington North America, Inc., Northwood, OH. | 49 CFR 178.603 | Request for special permit to authorize the alternative testing of custom manufactured containers that will be used to transport flammable solids, organic, n.o.s. (ferrocene). (mode 1) |
| EE 14488–N | | Sanofi Pasteur, Swiftwater, PA. | 49 CFR 173.24(b)(1) | To authorize the transportation in commerce of an influenza vaccine in a custom stainless steel batch reactor at a constant pressure of 1–5 psig by use of a cylinder feeding air into the reactor. (mode 1) |
| EE 14489–N | | Chugach Electric Association, Inc., Anchorage, AK. | 49 CFR 172.101 Hazardous Materials Table Column (9B). | To authorize the transportation in commerce of Caustic alkali liquids in certain bulk packaging of 400 gallon capacity or less by cargo aircraft within the State of Alaska. (mode 4) |
| EE 14497–N | PHMSA–27828 | B&H Systems, Inc., Elk Grove Village, IL. | 49 CFR 173.183 and 172.302(c). | This emergency special permit authorizes the one-time transportation in commerce of certain nitrate cellulose film packaged in non-DOT specification packaging. (mode 1) |
| EE 14501–N | | Halliburton Energy Services, Inc., Houston, TX. | 49 CFR Parts 171–180 | To authorize the emergency transportation in commerce of radioactive material in a section of pipe not subject to the Hazardous Materials Regulations except as provided herein. (modes 1, 3) |
| EE 14516–N | PHMSA–28468 | FedEx Express, Baton Rouge, LA. | 49 CFR 175.75(d), 172.203(a), 172.301(c). | To authorize a package of radioactive material that is labeled with the Cargo Aircraft Only label and also a subsidiary hazard label to be loaded in an accessible cargo location when transported by aircraft. (modes 4, 5) |
| EE 14518–N | | Alliant Techsystems, Inc. (ATK), Plymouth, MN. | 49 CFR 173.62 | To authorize the transportation in commerce of Primers, cap type, UN0044 in non-DOT specification packaging when transported by private carrier for a distance of 10 miles or less. (mode 1) |
| EE 14526–N | | Kidde Aerospace, Wilson, NC. | 49 CFR 173.302a | To authorize the one-way transportation of a Division 2.2 compressed gas in a non-DOT specification cylinder similar to a DOT–39 for transportation by motor vehicle. (modes 1, 3) |
| EE 14530–N | | Sandia National Laboratories, Livermore, CA. | 49 CFR 173.242 | To authorize the transportation in commerce of a PG III flammable liquid in alternative packaging (a Neutron Scatter Camera) by motor vehicle and cargo vessel. (modes 1, 3) |
| EE 14531–N | | Astar Air Cargo, Inc., Wilmington, OH. | 49 CFR Parts 100–180 | To authorize the transportation in commerce of a breath tester in company owned aircraft as unregulated. (modes 4, 5) |
| EE 14533–N | | Skydande Helicopters of Northern Nevada, Inc., Minden, NV. | 49 CFR 172.101 Column (9B) | To authorize the transportation of certain forbidden explosives by helicopter in remote areas of Utah, Oklahoma, Colorado and Wyoming to seismic drilling sites. (mode 4) |
| EE 14540–N | PHMSA–28731 | Korean Air Lines Co., Ltd., Los Angeles, CA. | 49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27; 175.30(a)(1), 175.320. | To authorize the air transportation in commerce of certain explosives which are forbidden for shipment by cargo-only aircraft. (mode 4) |
| EE 14541–N | | Northern Air Cargo, Inc., Anchorage, AK. | 49 CFR 172.101 Column (9B), 172.301(c) and 172.203(a). | To authorize the one-time one-way transportation in commerce of anhydrous ammonia in a DOT–4AA 480 specification cylinders aboard a cargo-only aircraft. (mode 4) |
| EE 14551–N | PHMSA–28928 | Aerojet, Redmond, WA .. | 49 CFR 173.56 | To authorize the transportation in commerce of certain explosives as Dangerous Good in Apparatus, UN3363 instead of the EX classification of Cartridge, power device, UN0323. (modes 1, 2, 3, 4, 5) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
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| EE 14553–N | PHMSA–28929 | Chemtrade Logistics, Inc., North York, ON. | 49 CFR 178.3(a) | To authorize the transportation in commerce of approximately 3,200 UN1A2 drums containing Sodium Hydrosulfite powder, UN1384 that are marked with the UN certification only on the head of the drum. (mode 1) |
| EE 14557–N | | Pacific Bio-Material Management, Inc., Fresno, CA. | 49 CFR 173.196 and 178.609 | To authorize the one-time, one-way transportation in commerce of certain Category A infectious substances by motor vehicle in alternative packaging for a distance of less than 15 miles. (mode 1) |
| EE 14562–N | | The Lite Cylinder Company, Franklin, TN. | 49 CFR 173.304a(a)(1) | To authorize the manufacture, marking, sale and use of a non-DOT specification, liner-less, fully-wrapped fiberglass composite cylinder for the transportation in commerce of certain Division 2.1 and 2.2 materials. |
| EE 14563–N | PHMSA–29093 | The Procter & Gamble Distributing LLC, Cincinnati, OH. | 49 CFR 171.8 and 173.306(a)(3). | To authorize the one-time, one-way, transportation in commerce of certain non-DOT specification metal receptacles containing Division 2.1 material as Consumer commodity, ORM–D by motor vehicle for disposal only. (mode 1) |
| EE 14568–N | PHMSA–29130 | Department of Defense, Ft. Eustis, VA. | 49 CFR 173.431 | To authorize the transportation in commerce of portable nuclear gauges containing certain radioactive materials exceeding the quantity that may be transported in a Type A packaging. |
| EE 14579–N | | Summitt Environmental, Inc. (Summitt), Wake Village, TX. | 49 CFR 173.304a | To authorize the transportation in commerce of non-DOT specification cylinders containing methylamine, anhydrous one-time, one-way by motor vehicle for disposal. (mode 1) |
| EE 14580–N | | LifeSparc, Hollister, CA | 49 CFR 173.56(b) | To authorize the transportation in commerce of certain explosive materials without an EX approval by motor vehicle. (mode 1) |
| EE 14581–N | | Saint Louis University, St. Louis, MO. | 49 CFR 173.196; 178.609 | To authorize the one-way transportation in commerce of infectious substances other than Risk Group 4 in specially designed packaging (freezers). (mode 1) |
| EE 14583–N | | Matheson Tri-Gas, Parsippany, NJ. | 49 CFR 173.3(d) | To authorize the one-time, one-way transportation in commerce of a leaking DOT 3AA specification cylinder containing dichlorosilane overpacked in a salvage cylinder. (modes 1, 3) |
| **MODIFICATION SPECIAL PERMIT WITHDRAWN** | | | | |
| 11650–M | | Autoliv ASP, Inc., Ogden, UT. | 49 CFR 173.301; 173.302; 178.65–9. | To modify the special permit to allow a failure to occur at a gage pressure less than 2.0 times the test pressure as provided by 49 CFR 178.65(f)(2)(i) or the pressure required to demonstrate a 1.5 times Safety Factor per the USCAR specifications. |
| 10698–M | | Worthington Cylinders-Wisconsin, Chilton, WI. | 49 CFR 173.304(a)(2); 178.50 | To modify the special permit to authorize charging of the cylinders with an additional Division 2.2 gas. |
| 14172–M | PHMSA–20906 | Pacific Bio-Material Management, Inc., d/b/a/ Pacific Scientific Transport, Fresno, CA. | 49 CFR 173.196 and 173.199 | To modify the special permit to authorize additional customers outside of the current radius specified in the permit, to allow more than two freezers on each dedicated transport vehicle and to authorize more than seven shipments per year. |
| 5022–M | | Alliant Techsystems, Inc., Elkton, MD. | 49 CFR 174.101(L); 174.104(d); 174.112(a); 177.834(1)(1). | To modify the special permit to authorize the transportation in commerce of additional Division 1.2 hazardous materials. |
| **NEW SPECIAL PERMIT WITHDRAWN** | | | | |
| 14408–N | PHMSA–25996 | TOTAL Petrochemicals USA Inc., Pasadena, TX. | 49 CFR 173.242; 178.245–1(c); 178.245–1(d) (4). | To authorize the transportation in commerce of a non-DOT specification portable tank comparable to a specification DOT 51 portable tank equipped with bottom outlet and no internal shutoff valve for use in transporting various hazardous materials classed in Division 4.2 and 4.3. (modes 1, 3) |

| S.P. No. | S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
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| 14420–N ..... | PHMSA–26306 | Garden State Tobacco d/b/a H.J. Bailey Co., Neptune, NJ. | 49 CFR 173.186(c) ..... | To authorize the transportation in commerce of strike anywhere matches in non-DOT specification packages not exceeding 50 pounds each by private motor carrier not subject to the Hazardous Materials Regulations, except for marking. (mode 1) |
| 14438–N ..... | PHMSA–26550 | Matheson Tri-Gas, Parsippany, NJ. | 49 CFR 173.301(h) and 173.40. | To authorize the transportation in commerce of certain DOT 3A and 3AA cylinders containing Division 2.1, 2.2 and 2.3 hazardous materials that have developed a leak and been capped with a special sealing device. (modes 1, 2, 3) |
| 14468–N ..... | PHMSA–27188 | REC Advanced Silicon Materials LLC, Butte, MT. | 49 CFR 173.301(f) ..... | To authorize the transportation in commerce of certain cylinders containing Silane, compressed with a capacity over 50 L with a single relief device rather than one at each end. (modes 1, 2, 3) |
| 14473–N ..... | PHMSA–27189 | Weatherford International, Fort Worth, TX. | 49 CFR 173.302a and 173.304a. | To authorize the manufacture, marking, sale and use of a non-DOT specification cylinder similar to a DOT Specification 3A cylinder for use in the oil well sampling industry. (modes 1, 2, 3, 4) |
| 14529–N ..... | PHMSA–28526 | EnviroClean Management Services, Inc., Dallas, TX. | 49 CFR 172.301(c); 173.197(d). | To authorize the transportation in commerce of regulated medical waste in containers that are not leak-proof per 173.197(d). (mode 1) |
| **EMERGENCY SPECIAL PERMIT WITHDRAWN** | | | | |
| EE 11109–M | ..... | Northland Services, Inc., Seattle, WA. | 49 CFR 176.170(b) ..... | To modify the special permit to authorize transportation of Division 5.1 materials. (mode 3) |
| EE 14446–N | ..... | Matheson-Tri Gas, Parsippany, NJ. | 49 CFR 173.301(1) ..... | To authorize the transportation in commerce of 196, new foreign-manufactured cylinders, not previously filled, but hydro-tested at the time of manufacture, to be permitted to be filled for the first time without an additional hydrostatic test, as required in 49 CFR 173.301(1). (modes 1, 3) |
| EE 14521–N | ..... | World Asia Logistics, Inc., Los Angeles, CA. | 49 CFR 172.101 Column (9B) | To authorize the transportation in commerce of Hydrogen bromide, anhydrous by cargo aircraft. (mode 4) |

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| 11911–M ..... | Request by Transfer Flow, Inc Chico, CA December 27,2006. To modify the special permit to authorize quick connect hoses which would contain hazardous material when disconnected. |
| 10945–M ..... | Request by Structural Composites Industries Pomona, CA October 05, 2006. To modify the special permit to authorize retest markings to be applied to the cylinder neck. |
| 12412–M ..... | Request by ChemStation International Lima, OH March 16, 2007. To modify the special permit to allow the attendance requirements in 49 CFR 177.837(d) for Class 8 materials described as ''Compounds, cleaning liquid.'' |
| 12574–M ..... | Request by Weldship Corporation Bethlehem, PA July 02, 2007. To modify the special permit to authorize the transportation in commerce of all hazardous materials currently authorized in DOT specification 107A seamless steel tank cars. |
| 12283–M ..... | Request by Interstate Battery of Alaska Anchorage, AK June 08, 2007. To modify the special permit to authorize the round trip transportation in commerce of batteries within the State of Alaska. |
| 11911–M ..... | Request by Transfer Flow, Inc Chico, CA July 17, 2007. To modify the special permit to allow an increase in the size of refueling tanks from 100 gallons to 300 gallons and to allow hoses to be attached to discharge outlets during transportation. |
| 12274–M ..... | Request by Snow Peak, Inc Clackamas, OR July 19, 2007. To modify the special permit to authorize larger non-DOT specification nonrefillable inside containers. |
| 14447–M ..... | Request by California Tank Lines, Inc. Stockton, CA July 19, 2007. To modify the special permit to authorize the unloading of DOT Specification MC 330 and 331 while the hose is still attached. |
| 14282–M ..... | Request by Dyno Nobel, Inc. Salt Lake City, UT August 07, 2007. To modify the special permit to authorize the transportation in commerce of additional Division 3 and 5.1 materials. |
| 11579–M ..... | Request by Senex Explosives, Inc. Cuddy, PA September 27, 2007. To modify the special permit to authorize the transportation of additional Class 3 materials and the use of several DOT specification and non-DOT specification bulk packagings. |
| 14397–N ..... | Request by UltraCell Corporation Livermore, CA April 05, 2007. To authorize the transportation in commerce of up to 250 milliliters of a 70% methanol/water solution in non-DOT specification combination packaging not subject to the Hazardous Materials Regulations. |
| 14406–N ..... | Request by Equa-Chlor Longview, WA November 08, 2006. To authorize the transportation in commerce of a DOT specification 105J600W tank car having a gross weight on rail of 286,000 pounds, for use in transportation of chlorine, Division 2.3, Poison-Inhalation Hazard/Zone B. |
| 14423–N ..... | Request by Accutest Laboratories Dayton, NJ May 08, 2007. To authorize the transportation in commerce of Nitric acid other than red fuming with 50% or less nitric acid as small quantities under the provision of 49 CFR 173.4. |

**DENIED**—Continued

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| 14430–N | Request by Prometheus International, Inc. Commerce, CA December 19, 2006. To authorize the transportation of a gas fuel tank for a lighter packaged in a special travel container in checked luggage on commercial passenger aircraft. |
| 14448–N | Request by UltraCell Corporation Livermore, CA April 10, 2007. To authorize passengers on aircraft to carry on fuel cells and spare cartridges as unregulated. |
| 14449–N | Request by Applied Companies Valencia, CA April 05, 2007. To authorize the manufacture, marking, sale and use of non-DOT specification cylinder similar to a DOT 4D for the transportation of nitrogen and carbon dioxide. |
| 14470–N | Request by Marsulex, Inc. Springfield, OR August 31, 2007. To authorize the transportation in commerce of certain hazardous materials by rail when the unloader does not secure access to the track as required by 49 CFR 174.67(a)(3). |
| 14481–N | Request by Transload of North America Middlesex, NJ August 02, 2007. To authorize the transportation in commerce of Class 9 solid hazardous waste in non-DOT Specification FIBCs. |
| 14499–N | Request by Optimus International AB, September 10, 2007. To authorize the manufacture, marking, sale and use of non-DOT specification, nonrefillable inside containers similar to DOT–2P for certain Division 2.1 flammable gases. |
| 14515–N | Request by STAKO, September 12, 2007. To authorize the manufacture, marking and sell of non-DOT specification fiber reinforced plastic cylinders built to DOT FRP–1 standard for use in transporting various flammable and non-flammable gases. |
| 14535–N | Request by Environmental Packaging Technologies Houston, TX October 05, 2007. To authorize the transportation in commerce of certain hazardous materials with a vapor pressure of 150 kPa at 55°C in intermediate bulk containers. |
| 14409–N | Request by Velsicol Chemical Corporation Rosemont, IL November 20, 2006. To authorize the transportation in commerce of a DOT-specification portable tank containing hexachlorocyclopentadiene, Division 6.1, Hazard Zone B by vessel which is not loaded to a filling density between 20% and 80% capacity. |
| 14433–N | Request by Cymer, LLC Decatur, TN November 22, 2006. To authorize the transportation in commerce of toxic by inhalation hazard liquids in combination packagings that have not had the required leakproof and hydrostatic testing. |

| S.P No. | S.P No. | Applicant | Regulation(s) | Nature of special permit thereof |
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| 11579–M | | Dyno Nobel, Inc., Salt Lake City, UT. | 49 CFR 177.848(e)(2); 177.848(g)(3). | To modify the special permit to authorize an additional packaging configuration for the transportation of Division 1.4, 1.5, & Combustible materials in DOT Specification and non-DOT specification bulk packagings. |
| 14401–N | PHMSA–25936 | Ultra Electronics, Braintree, MA. | 49 CFR 173.56 | To authorize the transportation of thermal batteries installed in equipment as not subject to the Hazardous Materials Regulations. (modes 1, 3, 4) |
| 14444–N | PHMSA–26548 | The Boeing Company, St. Louis, MO. | 49 CFR 173.60 | To authorize the transportation in commerce of a Division 1.3J explosive in non-DOT specification packaging by motor vehicle. (mode 1) |
| 14511–N | PHMSA–28185 | JACAM Chemicals, L.L.C., Sterling, KS. | 49 CFR 173.202, 173.203, 173.241 and 173.242. | To authorize the manufacture, mark and sale of non-specification 60-gallon portable metal tanks designed and constructed in accordance with DOT Specification 57, with certain exceptions, for use in transporting Class 3 (flammable) and Class 8 (corrosive) hazardous materials by highway. (mode 1) |
| EE 14386–N | | Environmental Protection Agency, Edison, NJ. | 49 CFR parts 100–185 | To authorize the transportation in commerce of hazardous materials used to support the recovery relief efforts within the flood disaster areas as not subject to the Hazardous Materials Regulations. |

[FR Doc. 07–5079 Filed 10–15–07; 8:45 am]
BILLING CODE 4909–60–M

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Notice of Application for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before November 15, 2007.

**ADDRESS COMMENTS TO:** Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permit is published in

accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 10, 2007.

**Delmer F. Billings,**

*Director, Officer of Hazardous Materials, Special Permits and Approvals.*

NEW SPECIAL PERMITS

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| 14584–N ..... | | WavesinSolids LLC State College, PA. | 49 CFR 173.302 and 180.209. | To authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2 and 2.3 materials. (modes 1, 2, 3, 4, 5). |
| 14585–N ..... | | Kiddle Aerospace Wilson, NC. | 49 CFR 178.65 ..... | To authorize the manufacture, marking, sale and use of certain non-DOT specification cylinders (fire extinguishers) that are used as components on the US Army's Future Combat Systems Manned Ground Vehicles. (mode 1). |
| 14587–N ..... | | Maxwell Technologies San Diego, CA. | 49 CFR 49 CFR parts 171–180. | To authorize the transportation in commerce of certain non-DOT specification packagings (ultracapacitors) containing small amounts of acetonitrile as not subject to the Hazardous Materials Regulations. (modes 1, 2, 3, 4, 5). |
| 14588–N ..... | | Tulsa Gas Technologies, Inc. Tulsa, OK. | 49 CFR 177.834 ..... | To authorize the transportation in commerce of certain DOT 3AA specification cylinders containing compressed natural gas in bundles without removing them from the motor vehicle when loading or unloading. (mode 1). |
| 14589–N ..... | | Florida Power and Light Co. Jensen Beach, FL. | 49 CFR 173.403, 173.427(b), 173.465(c) and (d). | To authorize the transportation in commerce of one Class 7 reactor vessel closure head and two steam generators containing radioactive materials in alternative packaging. (mode 1). |
| 14591–N ..... | | Essex Cryogenics of MO, Inc. St. Louis, MO. | 49 CFR 173.316 ..... | To authorize the manufacture, marking, sale and use of a non-DOT specification cylinder similar to a DOT 4L for the transportation of in commerce of Oxygen, refrigerated liquid. (modes 1, 2, 3, 4, 5). |
| 14592–N ..... | | Southwest Airlines Co. Dallas, TX. | 49 CFR 172.202(a)(6) ..... | To authorize the transportation in commerce of Life-Saving appliances, self-inflating by air when identifying only the gross weight per package on shipping papers. (mode 5). |
| 14593–N ..... | | American Railcar Industries St. Charles, MO. | 49 CFR 180.509 ..... | To authorize the continued transportation in commerce of 23 DOT Specification 111 tank cars that are past their test date by up to 6 months. (mode 2). |

[FR Doc. 07–5080 Filed 10–15–07; 8:45 am]

**BILLING CODE 4909–60–M**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications Delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each applications is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other prior issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on October 10, 2007.

**Delmer F. Billings,**

*Director, Office of Hazardous Materials, Special Permits and Approvals.*

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| **Modification to Special Permits** | | | |
| 10481–M | M–1 Engineering Limited Bradfrod, West Yorkshire | 4 | 11–30–2007 |
| 14167–M | Trinityrail, Dallas, TX | 1, 3, 4 | 11–30–2007 |
| **New Special Permit Applications** | | | |
| 14385–N | Kansas City Southern Railway Company, Kansas City, MO | 4 | 11–30–2007 |
| 14442–N | Trinityrail, Dallas, TX | 4 | 11–30–2007 |
| 14483–N | WEW Westerwaelder Eisenwerk, Weitefeld, Germany | 4 | 11–30–2007 |
| 14504–N | Medis Technologies Ltd., New York, NY | 1 | 11–30–2007 |
| 14505–N | Arkema, Inc., Philadelphia, PA | 4 | 11–30–2007 |
| 14500–N | Northwest Respiratory Services, St. Paul, MN | 4 | 11–30–2007 |
| 14457–N | Amtrol Alfa Metalomecanica SA, Portugal | 4 | 10–31–2007 |
| 14436–N | BNSF Railway Company, Topeka, KS | 4 | 11–30–2007 |
| 14402–N | Lincoln Composites, Lincoln, NE | 1 | 12–31–2007 |

[FR Doc. 07–5081 Filed 10–15–07; 8:45 am]
**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for modification of special permit.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffic ''M'' denote a modification request. There applications have been separated from the new application for special permits to facilitate processing.

**DATES:** Comments must be received on or before October 31, 2007.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 10, 2007.

**Delmer F. Billings,**

*Director, Office of Hazardous Materials, Special Permits and Approvals.*

MODIFICATION SPECIAL PERMITS

| Application *No.* | Docket *No.* | Applicant | Regulation(s) affected | Nature of special permit thereof |
|---|---|---|---|---|
| 10914–M | | Honeywell International, Inc., Morristown, NJ. | 49 CFR 178.44 | To modify the special permit to authorize an increase in the service life of non-DOT specification pressure vessels used for the transportation of compressed helium. |
| 11650–M | | Autoliv ASP, Inc., Ogden, UT. | 49 CFR 173.301; 173.302; 178.65–9. | To modify the special permit to authorize a new air bag inflator. |
| 13548–M | RSPA–2004–17545 | Battery Council International (BCI). | 49 CFR 172.301(c), 173.159. | To modify the special permit to authorize an increase in the amount of battery acid that may be transported without placarding. |
| 14096–M | RSPA–2005–20125 | United States Enrichment Corporation (USEC), Paducah, KY. | 49 CFR 173.420 | To modify the special permit to authorize the one-time, one-way transportation of additional Model 480M and Model 48A cylinders containing a Class 7 material that does not conform to ANSI N14.1 standards. |
| 14149–M | PHMSA–2005–20471 | Digital Wave Corporation, Englewood, CO. | 49 CFR 180.205, 180.209. | To modify the special permit to remove the requirement for gain linearity control accuracy being checked every six months in accordance with ASTM–E317. |

MODIFICATION SPECIAL PERMITS—Continued

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permit thereof |
|---|---|---|---|---|
| 14206–M ..... | PHMSA–2005–21762 | Digital Wave Corporation, Englewood, CO. | 49 CFR 180.205 ..... | To modify the special permit for gain linearity control accuracy being checked every six months in accordance with ASTM–E317. |
| 14427–M ..... | PHMSA–2006–26246 | The Procter & Gamble Company, Cincinnati, OH. | 49 CFR 173.156(b)(1), 173.306(a) and 173.306(a)(3)(v). | To modify the special permit to authorize the transportation in commerce of consumer commodities that are unitized in cages, carts, boxes, or similar overpacks to be transported under the provisions of § 173.156(b). |
| 14526–M ..... | ..... | Kidde Aerospace, Wilson, NC. | 49 CFR 173.302a ..... | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a Division 2.2 compressed gas in a non-DOT specification cylinder similar to a DOT–39 for transportation by motor vehicle. |

[FR Doc. 07–5082 Filed 10–15–07; 8:45 am]

**BILLING CODE 4909–60–M**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Additional Designation of Entities Pursuant to Executive Order 12978

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 21 newly-designated individuals and entities whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers.''

**DATES:** The designation by the Director of the Office of Foreign Assets Control of the 21 individuals and entities identified in this notice pursuant to Executive Order 12978 is effective on October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site *(http://www.treas.gov/ofac)* or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

#### Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of the Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On October 10, 2007, the Director of the Office of Foreign Assets Control, in consultation with the Attorney General and Secretary of State, as well as the Secretary of Homeland Security, designated 21 entities and individuals whose property and interests in property are blocked pursuant to the Order.

The list of additional designees is as follows:

1. Alzate Jimenez, Diego Uriel, c/o Andinaenvios An en S.A., Quito, Ecuador; c/o Cambios y Capitales S.A., Bogota, Colombia; c/o Financiacion y Empresa S.A., Cali, Colombia; c/o Fundacion Para La Educacion y El Desarrollo Social, Cali, Colombia; c/o Inversiones Corporativas LTDA., Cali, Colombia; c/o Inversiones Sardi Alzate S.C.S., Cali, Colombia; c/o Outsourcing De Operaciones S.A., Bogota, Colombia; c/o Turismo Hansa S.A., San Andres, Colombia; DOB 13 Aug 1959; POB Colombia; Cedula No. 16658014 (Colombia); Passport 16658014 (Colombia) (individual) [SDNT].

2. Alzate Jimenez, Luis Holmes, c/o Andinaenvios An en S.A., Quito, Ecuador; c/o Cambios y Capitales S.A., Bogota, Colombia; c/o Fundacion Para La Educacion y El Desarrollo SOCIAL, Cali, Colombia; c/o Turismo Hansa S.A., San Andres, Colombia; Calle 5E No. 47–57 apto. 302, Cali, Colombia; DOB 04 Jun 1958; POB Colombia; Cedula No. 16597861 (Colombia); Passport AF719920 (Colombia) (individual) [SDNT].

3. Alzate Jimenez, Tulio Hernando, c/o Andinaenvios An en S.A., Quito, Ecuador; c/o Cambios y Capitales S.A., Bogota, Colombia; c/o Constructora e Inmobiliaria Andina S.A., Cali, Colombia; c/o Financiacion y Empresa S.A., Cali, Colombia; c/o Fundacion Para La Educacion y El Desarrollo SOCIAL, Cali, Colombia; c/o Inversiones Corporativas LTDA., Cali, Colombia; c/o T.H. Alzate Y CIA. S.C.S., Cali, Colombia; c/o Turismo Hansa S.A., San Andres, Colombia; DOB 28 Mar 1961; POB Colombia; Cedula No. 16659731 (Colombia); Passport AF770530 (Colombia) (individual) [SDNT].

4. Andinaenvios An en S.A., Avenida 10 de Agosto N37–288 y Villalengua, Quito, Ecuador; RUC # 1791769155001 (Ecuador) [SDNT].

5. Asesoria y Soluciones Grupo Consultor S.A., Calle 15 Norte No. 6N–34 ofc. 404, Cali, Colombia; NIT # 805018000–1 (Colombia) [SDNT].

6. Cambios y Capitales S.A. (a.k.a. C & CAP S.A.), Calle 12N No. 3N–12, Cali, Colombia; Calle 19 No. 6–48 Local 314–315, Pereira, Colombia; Calle 27 No. 26–60 Local 105 D, Tulua, Valle, Colombia; Calle 29 No. 27–56 Local 102, Palmira, Valle, Colombia; Calle 99 No. 11A–41, Bogota, Colombia; Carrera 4 No. 10–62 Local 15, Cartago, Valle, Colombia; Carrera 15 No. 93–60 Local 1–36, Bogota, Colombia; Carrera 43A No. 34–95 Local 268, Medellin, Colombia; Carrera 44 No. 6A–43 piso 2, Cali, Colombia; Centro Comercial New Point, Avenida Providencia No. 1–35 Local 106, San Andres, Colombia; Transversal 71 No. 26–94 Sur Local 4506, Bogota, Colombia; NIT # 805001015–5 (Colombia) [SDNT].

7. Constructora e Inmobiliaria Andina S.A., Calle 16 Norte No. 9N–41, Cali, Colombia; NIT # 800155233–7 (Colombia) [SDNT].

8. Consultoria Integral y Asesoria Empresarial S.A. (f.k.a. ASECOM S.A.; a.k.a. COINEMP S.A.), Calle 15 Norte No. 6N–34 ofc. 404, Cali, Colombia; NIT # 890326149–8 (Colombia) [SDNT].

9. Financiacion y Empresa S.A. (a.k.a. FINEMPRESA S.A.), Calle 16 Norte No. 9N–41, Cali, Colombia; NIT # 800153965–0 (Colombia) [SDNT].

10. Fundacion Para La Educacion y El Desarrollo Social (a.k.a. FUNDASOCIAL), Calle 16 Norte No. 9N–41, Cali, Colombia; NIT # 800142875–9 (Colombia) [SDNT].

11. Inversiones Corporativas LTDA., Calle 16 Norte No. 9N–41, Cali, Colombia; NIT # 800203027–2 (Colombia) [SDNT].

12. Inversiones Epoca S.A., Calle 15 Norte No. 6N–34 ofc. 404, Cali, Colombia; NIT # 805012582–7 (Colombia) [SDNT].

13. Inversiones Sardi Alzate S.C.S., Calle 16 Norte No. 9N–41, Cali, Colombia; NIT # 805009126–0 (Colombia) [SDNT].

14. J.A.J. Barbosa y CIA. S.C.S. (f.k.a. Comercio Global y CIA. S.C.S.), Calle 15 Norte No. 6N–34 ofc. 404, Cali, Colombia; NIT # 800214437–6 (Colombia) [SDNT].

15. Lopera Barbosa, Adriana, c/o Asesoria y Soluciones Grupo Consultor S.A., Cali, Colombia; c/o Consultoria Integral y Asesoria Empresarial S.A., Cali, Colombia; c/o Inversiones Epoca S.A., Cali, Colombia; c/o J.A.J. Barbosa y CIA. S.C.S., Cali, Colombia; Calle 1A No. 60–61 apto. 205B, Cali, Colombia; DOB 21 Jun 1965; POB Cali, Colombia; Cedula No. 31930002 (Colombia); Passport AG820191 (Colombia) (individual) [SDNT].

16. Lopera Barbosa, Jairo Humberto, c/o Asesoria Y Soluciones Grupo Consultor S.A., Cali, Colombia; c/o Consultoria Integral y Asesoria Empresarial S.A., Cali, Colombia; c/o Inversiones Epoca S.A., Cali, Colombia; c/o J.A.J. Barbosa y CIA. S.C.S., Cali, Colombia; Carrera 72 No. 11–46 Blq. 11 apto. 403, Cali, Colombia; DOB 22 Feb 1971; POB Cali, Colombia; Cedula No. 16792756 (Colombia); Passport AJ172334 (Colombia) (individual) [SDNT].

17. Lopera Barbosa, Juan Carlos, c/o Asesoria y Soluciones Grupo Consultor S.A., Cali, Colombia; c/o Consultoria Integral y Asesoria Empresarial S.A., Cali, Colombia; c/o Inversiones Epoca S.A., Cali, Colombia; c/o J.A.J. Barbosa y CIA. S.C.S., Cali, Colombia; Carrera 81 No. 13A–125 Casa 11, Cali, Colombia; DOB 18 Jan 1968; POB Cali, Colombia; Cedula No. 16746731 (Colombia); Passport AK122874 (Colombia) (individual) [SDNT].

18. Outsourcing De Operaciones S.A. (a.k.a. Afiazacredit; a.k.a. Avantecard; a.k.a. Crediavante; f.k.a. Servicios y Remesas S.A.; a.k.a. Turismo Avante), Calle 52A No. 9–86 piso 2 y piso 3, Bogota, Colombia; NIT # 805021157–8 (Colombia) [SDNT].

19. Salazar Lugo, Nelson, c/o Turismo Hansa S.A., San Andres, Colombia; DOB 14 Jul 1955; POB Colombia; Cedula No. 16597419 (Colombia); Passport AH682171 (Colombia) (individual) [SDNT].

20. T.H. Alzate y Cia. S.C.S., Calle 16 Norte No. 9N–41, Cali, Colombia; NIT # 805008972–0 (Colombia) [SDNT].

21. Turismo Hansa S.A., Avenida 4 Norte No. 19N–34 ofc. 302, Cali, Colombia; Centro Comercial New Point Local 204, San Andres, Colombia; NIT # 860027780–4 (Colombia) [SDNT].

Dated: October 10, 2007.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. E7–20335 Filed 10–15–07; 8:45 am]

**BILLING CODE 4811–45–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Narcotics Trafficker Pursuant to Executive Order 12978

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of four individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

**DATES:** The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

#### Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of the Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On October 10, 2007, the Director of OFAC removed from the list of

Specially Designated Narcotics Traffickers the individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals follows:

CALDERON ASCANIO, Ricardo, c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 91220683 (Colombia) (individual) [SDNT].

CORDOBA VALENCIA, Juan Ramon, c/o BONOMERCAD S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 19273511 (Colombia) (individual) [SDNT].

CALDERON RODRIGUEZ, Solange, c/o INMOBILIARIA AURORA LTDA., Cali, Colombia; c/o SOCIEDAD CONSTRUCTORA LA CASCADA S.A., Cali, Colombia; c/o INVERSIONES SANTA LTDA., Cali, Colombia; DOB 17 Jun 1966; Cedula No. 31957652 (Colombia) (individual) [SDNT].

IDROBO ZAPATA, Edgar Hernando, c/o INVERSIONES EL PENON S.A., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; Cedula No. 6078860 (Colombia) (individual) [SDNT].

Dated: October 10, 2007.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. E7–20336 Filed 10–15–07; 8:45 am]

**BILLING CODE 4811–45–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 9460 and 9477

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 9460 and 9477, Tax Forms Inventory Report.

**DATES:** Written comments should be received on or before December 17, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* Tax Forms Inventory Report.

*OMB Number:* 1545–1739.

*Form Number:* 9460 and 9477.

*Abstract:* Form 9460 and 9477 are designed to collect tax forms inventory information from banks, post offices, and libraries that distribute federal tax forms. Data is collected detailing the quantities and types of tax forms remaining at the end of the filing season. The data is combined with the shipment date for each account and used to establish forms distribution guidelines for the following year. Form 9460 is used for accounts who order forms in carton quantities, and Form 9477 is used for those who order forms in less than carton quantities.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

*Estimated Number of Respondents:* 14,000.

*Estimated Time per Respondent:* 14 minutes.

*Estimated Total Annual Burden Hours:* 3,417.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2007.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E7–20303 Filed 10–15–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8038–R

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8038–R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.

**DATES:** Written comments should be received on or before December 17, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.

*OMB Number:* 1545–1750.

*Form Number:* 8038–R.

*Abstract:* Under Treasury Regulations section 1.148–3(i), bond issuers may recover an overpayment of arbitrage rebate paid to the United States under Internal Revenue Code section 148. Form 8038–R is used to request recovery of any overpayment of arbitrage rebate made under the arbitrage rebate provisions.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or tribal governments.

*Estimated Number of Respondents:* 200.

*Estimated Time per Respondent:* 12 hours, 16 minutes.

*Estimated Total Annual Burden Hours:* 2,458.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2007.

**Glenn Kirkland,**

*IRS Reports Clearance Office.*

[FR Doc. E7–20305 Filed 10–15–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1120–SF

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–SF, U.S. Income Tax Return for Settlement Funds (Under Section 468B).

**DATES:** Written comments should be received on or before December 17, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* U.S. Income Tax Return for Settlement Funds (Under Section 468B).

*OMB Number:* 1545–1394.

*Form Number:* 1120–SF.

*Abstract:* Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,000.

*Estimated Time per Respondent:* 27 hours, 20 minutes.

*Estimated Total Annual Burden Hours:* 27,330.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2007.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E7–20306 Filed 10–15–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–New (38 CFR 21.7080)]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice

announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900-New (38 CFR 21.7080)'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (38 CFR 21.7080).''

**SUPPLEMENTARY INFORMATION:**

*Title:* Evidence for Transfer of Entitlement of Education Benefits (CFR 21.7080).

*OMB Control Number:* 2900-New (38 CFR 21.7080).

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Servicemembers on active duty may request to designate up to a maximum of 18 months of their educational assistance entitlement to their spouse, one or more of their children, or a combination of the spouse and children. VA will accept DOD Form 2366–1 as evidence that the servicemember was approved by the military to transfer entitlement. The servicemember must submit in writing to VA, the name of each dependent, the number of months of entitlement transferred to each dependent, and the period (beginning date or ending date) for which the transfer will be effective for each designated dependent. VA will use the information shown on DOD Form 2366–1 to determine whether the dependent qualifies to receive education benefits under the transfer of entitlement provision of law.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 30, 2007, at page 41586–41587.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 2.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* Once.

*Estimated Number of Respondents:* 24.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20327 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0546]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Cemetery Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3521), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0546'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0546'' In any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Gravesite Reservation Survey (2 Year), VA Form 40–40.

*OMB Control Number:* 2900–0546.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form Letter 40–40 is sent biennially to individuals holding gravesite set-asides to ascertain their wish to retain the set-aside, or relinquish it. Gravesite reservation surveys are necessary as some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside. The survey is conducted to assure that gravesite set-asides do not go unused.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007, at pages 44613–44614.

*Affected Public:* Individuals or households, Business or other for profit.

*Estimated Annual Burden:* 2,750.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* Biennially.

*Estimated Number of Respondents:* 16,500.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20331 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0657]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information

needed to obtain certification from State approving agency and employees of VA certifying that they do not own any interest in a proprietary profit school.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 17, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0657'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Conflicting Interests Certification for Proprietary Schools, VA form 22–1919.

*OMB Control Number:* 2900–0657.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA pays education benefits to veterans and other eligible person pursuing approved programs of education. Employees of VA and State approving agency enrolled in a proprietary profit school are prohibited from owning any interest in the school. Educational assistance provided to veterans or eligible person based on their enrollment in proprietary school and who are officials authorized to signed certificates of enrollment are also prohibited from receiving educational assistance based on their enrollment. Propriety schools officials complete VA Form 22–1919 certifying that the institution and enrollees do not have any conflict of interest.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 25 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 150.

Dated: October 2, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20332 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0576]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's date of enrollment in a correspondence course.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 17, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0576'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L.104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Certificate of Affirmation of Enrollment Agreement—Correspondence Course (Under Chapters 20, 32, & 35, Title 38 U.S.C., section 903 of Pub. L. 96–342, or Chapter 1606, Title 10, U.S.C.), VA Form 22–1999c.

*OMB Control Number:* 2900–0576.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants enrolled in a correspondence training course complete and submit VA Form 22–1999c to the correspondence school to affirm the enrollment agreement contract. The certifying official at the correspondence school submits the form and the enrollment certification to VA for processing. VA uses the information to determine if the claimant signed and dated the form during the ten-day reflection period deciding whether to enroll in the correspondence course and if such course is suitable to his or her abilities and interest. In addition, the claimant must sign VA Form 22–1999c on or after the twelfth day the enrollment agreement was dated. VA will not pay educational benefits for correspondence training that was

completed nor accept the affirmation agreement that was signed and dated on or before the enrollment agreement date.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 48 hours.

*Estimated Average Burden Per Respondent:* 3 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 952.

October 3, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20333 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–New (22–0810)]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–New (22–0810)'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (22–0810).''

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Reimbursement of National Test Fee, VA Form 22–0810.

*OMB Control Number:* 2900–New (22–0810).

*Type of Review:* Existing collection in use without an OMB control number.

*Abstract:* Servicemembers, veterans, and eligible dependents complete VA Form 22–0810 to request reimbursement of national test fees. VA will use the data collected to determine the claimant's eligibility for reimbursement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007, at page 44614.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 32 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 129.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20350 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0261]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0261'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0261.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Refund of Educational Contributions (VEAP, Chapter 32, Title 38, U.S.C.), VA Form 22–5281.

*OMB Control Number:* 2900–0261.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Veterans and service persons complete VA Form 22–5281 to request a refund of their contribution to the Post-Vietnam Veterans Education Program. Contribution made into the Post-Vietnam Veterans Education Program may be refunded only after the participant has disenrolled from the program. Request for refund of contribution prior to discharge or release from active duty will be refunded on the date of the participant's discharge or release from activity duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment. Refunds may be made earlier in instances of hardship or other good reasons. Participants who stop their enrollment from the program after discharge or release from active duty contributions will be refunded within 60 days of receipt of their application.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007, at page 44613.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 833 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 5,000.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20351 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0188]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0188'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0188.''

**SUPPLEMENTARY INFORMATION:**

*Titles:* a. Request to Submit Estimate, Form Letter 10–90.

b. Veterans Application for Assistance in Acquiring Home Improvement and Structural Alterations, VA Form 10–0103.

c. Application for Adaptive Equipment Motor Vehicle, VA Form 10–1394.

d. Prosthetic Authorization for Items or Services, VA Form 10–2421.

e. Prosthetic Service Card Invoice, VA Form 10–2520.

f. Prescription and Authorization for Eyeglasses, VA Form 10–2914.

*OMB Control Number:* 2900–0188.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The following forms are used to determine eligibility, prescribe, and authorize prosthetic devices.

a. VA Form Letter 10–90 is used to obtain estimated price for prosthetic devices.

b. VA Form 10–0103 is used to determine eligibility/entitlement and reimbursement of individual claims for home improvement and structural alterations.

c. VA Form 10–1394 is used to determine eligibility/entitlement and reimbursement of individual claims for automotive adaptive equipment.

d. VA Form 10–2421 is used for the direct procurement of new prosthetic appliances and/or services. The form standardizes the direct procurement authorization process, eliminating the need for separate purchase orders, expedites patient treatment and improves the delivery of prosthetic services.

e. VA Form 10–2520 is used by the vendors as an invoice and billing document. The form standardizes repair/treatment invoices for prosthetic services rendered and standardizes the verification of these invoices. The veteran certifies that the repairs were necessary and satisfactory. This form is furnished to vendors upon request.

f. VA Form 10–2914 is used as a combination prescription, authorization and invoice. It allows veterans to purchase their eyeglasses directly. If the form is not used, the provisions of providing eyeglasses to eligible veterans may be delayed.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007 at pages 44615–44616.

*Affected Public:* Business or other for profit and Individuals or households.

*Estimated Total Annual Burden:* 5,738 hours.

a. Form Letter 10–90—708.
b. VA Form 10–0103—583.
c. VA Form 10–1394—1,000.
d. VA Form 10–2421—67.
e. VA Form 10–2520—47.
f. VA Form 10–2914—3,333.

*Estimated Average Burden Per Respondent:*

a. Form Letter 10–90—5 minutes.
b. VA Form 10–0103—5 minutes.
c. VA Form 10–1394—15 minutes.
d. VA Form 10–2421—4 minutes.
e. VA Form 10–2520—4 minutes.
f. VA Form 10–2914—4 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 71,200.

a. Form Letter 10–90—8,500.
b. VA Form 10–0103—7,000.
c. VA Form 10–1394—4,000.
d. VA Form 10–2421—1,000.
e. VA Form 10–2520—700.
f. VA Form 10–2914—50,000.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20352 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0111]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0111'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0111.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Purchaser or Owner Assuming Seller's Loans, VA Form 26–6382.

*OMB Control Number:* 2900–0111.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–6382 is completed by purchasers who are assuming veterans' guaranteed, insured,

and direct home loans. The information collected is essential in the determinations for release of liability as well as for credit underwriting determinations for substitution of entitlement. If a veteran chooses to sell his or her VA guaranteed home, VA will allow a qualified purchaser to assume the veteran's loan and all the responsibility under the guaranty or insurance. In regard to substitution of entitlement cases, eligible veteran purchasers must meet all requirements of liability in addition to having available loan guaranty entitlement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007, at pages 44614–44615.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 375 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 1,500.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20353 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0455]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0455'' in any correspondence.

*For Further Information or a Copy of the Submission Contact:* Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0455).''

**SUPPLEMENTARY INFORMATION:**

*Title:* Equal Opportunity Compliance Review Report, VA Form 20–8734 and Supplement to Equal Opportunity Compliance Review Report, VA Form 20–8734a.

*OMB Control Number:* 2900–0455.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, delegated authority to the Attorney General to coordinate the implementation and enforcement by Executive agencies of various equal opportunity laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance. The Order extended the delegation to cover Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. Department of Justice issued government-wide guidelines (29 CFR 42.406) instructing funding agencies to provide for the collection of data and information from applicants for and recipients of Federal assistance.

VA Forms 20–8734 and 20–8734a are used by VA personnel during regularly scheduled educational compliance survey visits, as well as during investigations of equal opportunity complaints, to identify areas where there may be disparate treatment of members of protected groups. VA Form 20–8734 is used to gather information from post-secondary proprietary schools below college level. The information is used to assure that VA-funded programs comply with equal opportunity laws. VA Form 20–8734a, is used to gather information from students and instructors at post-secondary proprietary schools below college level. The information is used to assure that participants have equal access to equal treatment in VA-funded programs. If this information were not collected, VA would be unable to carry out the civil rights enforcement responsibilities established in the Department of Justice's guidelines and VA's regulations.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007, at pages 44612–44613.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden and Average Burden Per Respondent:* Based on past experience, VBA estimates that 76 interviews will be conducted with recipients using VA Form 20–8734 at an average of 1 hour and 45 minutes per interview (133 hours). This includes one hour for an interview with the principal facility official, plus 45 minutes for reviewing records and reports and touring the facility. It is estimated that 76 interviews will be conducted with students using VA Form 20–8734a at an average of 30 minutes per interview (38 hours) and with instructors at an average of 30 minutes per interview (38 hours). Interviews are also conducted with 76 students without instructors at an average time of 30 minutes (38 hours). The total burden hour is 247.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 228.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20354 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0089]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the

collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0089'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0089.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Dependency of Parent(s), VA Form 21–509.

*OMB Control Number:* 2900–0089.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Veterans receiving compensation benefits based on 30 percent or higher for service-connected injuries and depends on his or her parent(s) for support, complete VA Form 21–509 to report income and dependency information. Surviving parents of deceased veterans are required to establish dependency only if they are seeking death compensation. Death compensation is payable when a veteran died on active duty or due to service-connected disabilities prior to January 1, 1957, or died between May 1, 1957 and January 1, 1972 while the veteran's waiver of U.S. Government Life Insurance was in effect. The data collected will be used to determine the dependent parent(s) eligibility for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007, at page 44616.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 4,000 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 8,000.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20365 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0253]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0253'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0253.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

*OMB Control Number:* 2900–0253.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–8736a is completed by nonsupervised lender's and the lender's nominee for credit underwriting with the Department of Veterans Affairs. Lenders are authorized by VA to make automatic guaranteed loans if approved for such purposes. The lender is required to have a qualified underwriter to review loans to be closed on automatic basis and determine that the loan meets VA's credit underwriting standards. VA uses the data collected on the form to evaluate the nominee's credit underwriting experience.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007, at page 44611.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 750 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 3,000.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20366 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0252]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 15, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive

Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0252'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0252.''

**SUPPLEMENTARY INFORMATION:** Title: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.

*OMB Control Number:* 2900–0252.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–8736 is used by nonsupervised lenders requesting approval to close loans on an automatic basis. Automatic lending privileges eliminate the requirement for submission of loans to VA for prior approval. Lending institutions with automatic loan privileges may process and disburse such loans and subsequently report the loan to VA for issuance of guaranty. The form requests information considered crucial for VA to make acceptability determinations as to lenders who shall be approved for this privilege.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 2007, at pages 44611–44612.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 50 hours.

*Estimated Average Burden per Respondent:* 25 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 120.

Dated: October 10, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–20367 Filed 10–15–07; 8:45 am]

**BILLING CODE 8320–01–P**

# Corrections

Federal Register
Vol. 72, No. 199
Tuesday, October 16, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 327

**RIN 3064–AD19**

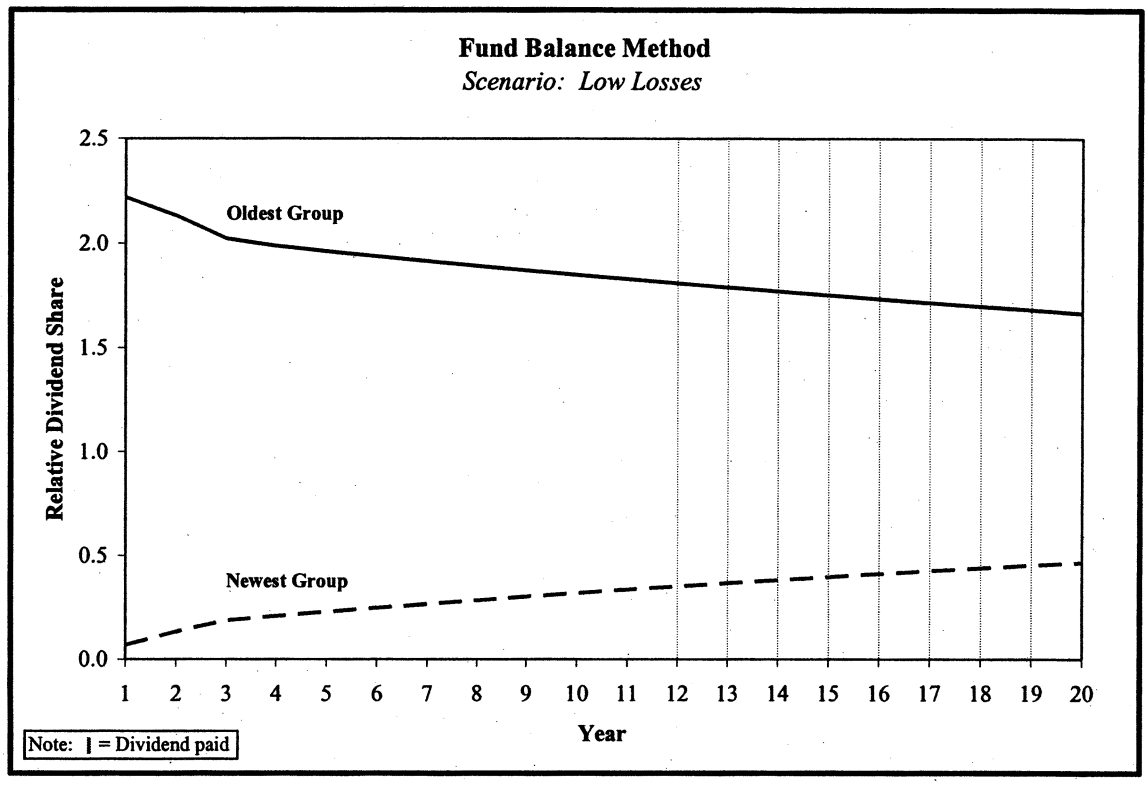
### Assessment Dividends

*Correction*

In proposed rule document 07–4596 beginning on page 53181 in the issue of Tuesday, September 18, 2007, make the following corrections:

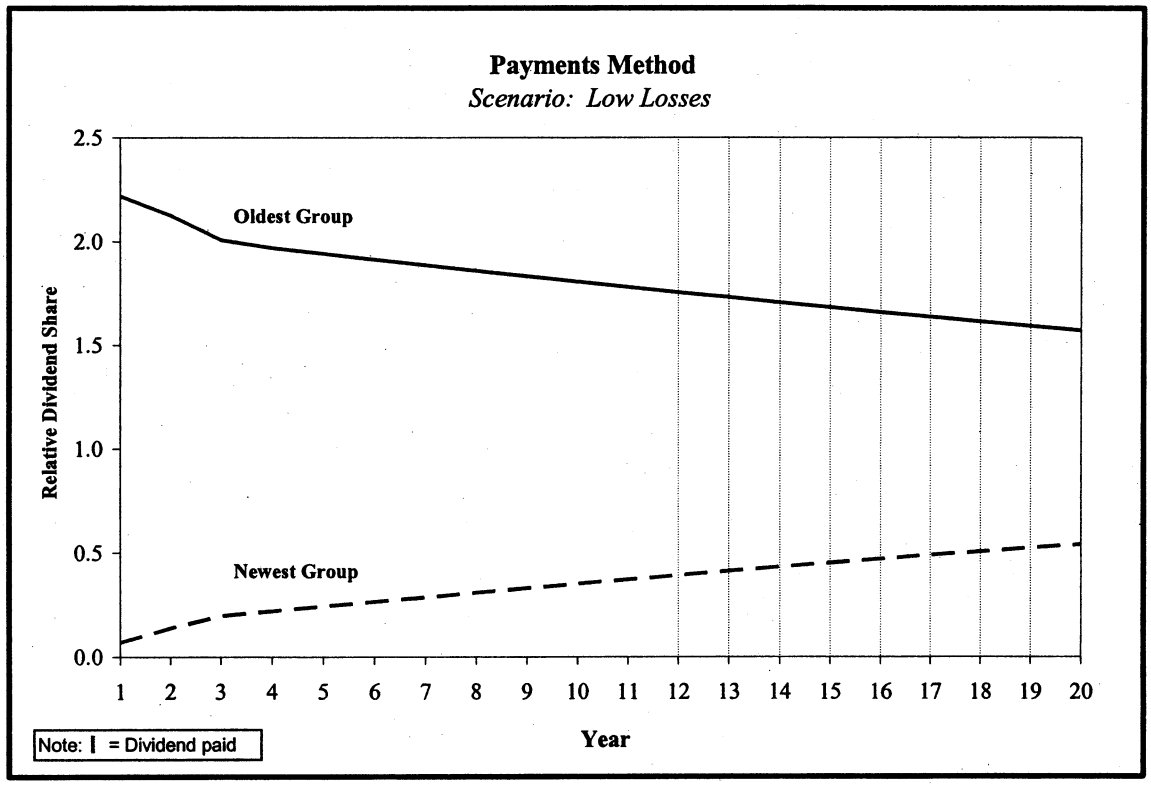
1. On page 53184, Chart 1 is being reprinted to read as follows:

**Chart 1**



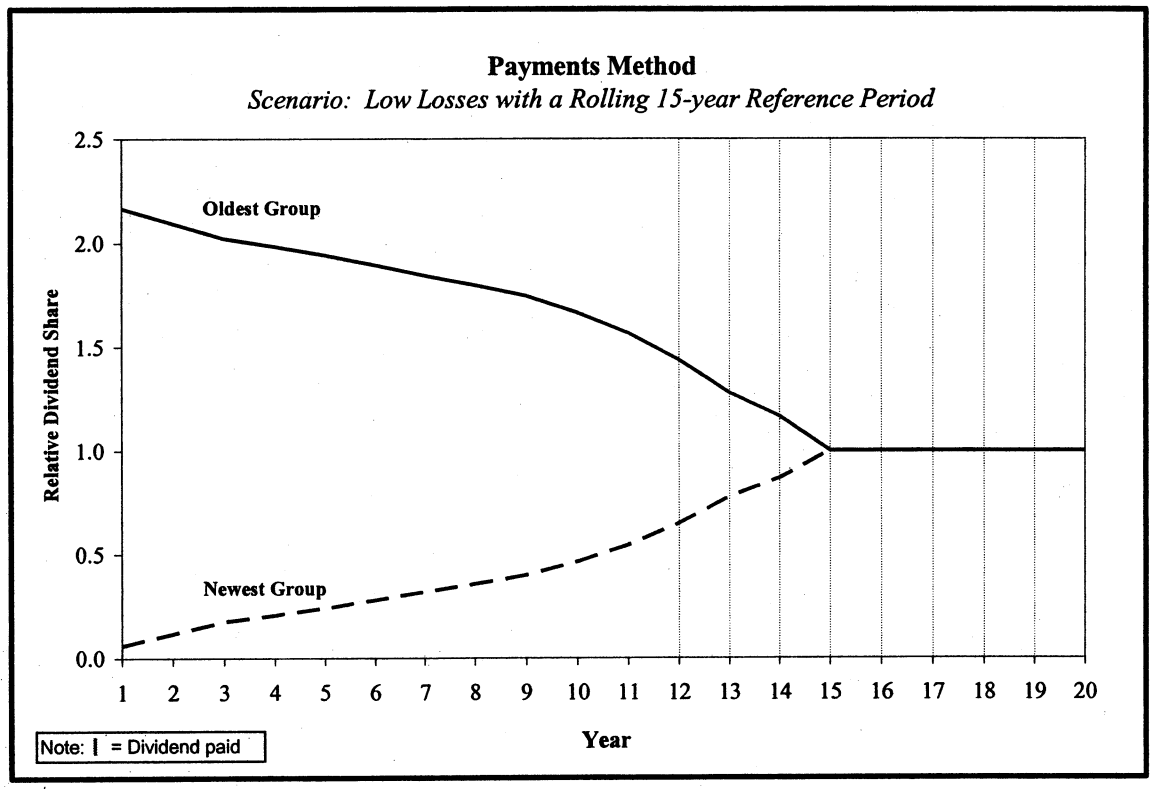

2. On page 53188, Chart 3 is being reprinted to read as follows:

**Chart 3**




On page 53192, Chart 5 is being reprinted to read as follows:

## Chart 5




[FR Doc. C7–4596 Filed 10–15–07; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 16, 2007

## Part II

# The President

**Proclamation 8190—National School Lunch Week, 2007**

**Proclamation 8191—White Cane Safety Day, 2007**

Federal Register
Vol. 72, No. 199
Tuesday, October 16, 2007

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 8190 of October 12, 2007**

## National School Lunch Week, 2007

**By the President of the United States of America**

**A Proclamation**

The National School Lunch Program provides millions of lunches to our Nation's children each school day. During National School Lunch Week, we renew our commitment to the health of our children and to ensuring that they receive nutritious meals and develop good eating habits.

Since it began in 1946, the National School Lunch Program has provided nutritious meals in schools across the country. The United States Department of Agriculture (USDA) has worked to ensure that these meals include fresh fruits, vegetables, and milk and that they meet dietary recommendations so children limit fat, sodium, cholesterol, and excess calories in their diet.

By learning to eat well, children can avoid problems that can lead to serious long-term health problems, including heart disease, asthma, and diabetes. Team Nutrition, part of the USDA Food and Nutrition Service, is playing an important role in promoting good nutrition to children in thousands of our Nation's schools, providing training and resources to food service professionals across our country.

National School Lunch Week is an opportunity to recognize food service professionals, school officials, and parents for their dedicated efforts to provide healthy foods to America's children. This week, we recommit ourselves to encouraging children to make nutritious food choices and lead healthy lifestyles.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of America's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October of each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim the week of October 14 through October 20, 2007, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program in appropriate activities that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–5139
Filed 10–15–07; 8:53 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 8191 of October 12, 2007**

## White Cane Safety Day, 2007

**By the President of the United States of America**

**A Proclamation**

Our country upholds the value of every person, and all Americans deserve an opportunity to realize the American dream. Many citizens who are blind or visually impaired use white canes to achieve greater independence and increase mobility and productivity. On White Cane Safety Day, we celebrate the symbolism of the white cane, and we underscore our dedication to ensuring more individuals have the ability to lead active lives and achieve their personal and professional goals.

My Administration is committed to helping Americans with disabilities live and work with greater freedom. Through the New Freedom Initiative, we are building on the progress of the Americans with Disabilities Act and helping our citizens who are blind or visually impaired gain greater access to the workplace, school, and community life. By working to tear down barriers, we are creating a society where all people are encouraged to reach their full potential and where the promise of our great Nation is accessible for everyone.

The Congress, by joint resolution (Public Law 88–628) approved on October 6, 1964, as amended, has designated October 15 of each year as ''White Cane Safety Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 15, 2007, as White Cane Safety Day. I call upon public officials, business leaders, educators, and all the people of the United States to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–5140
Filed 10–15–07; 8:53 am]
Billing code 3195–01–P

# Reader Aids

**Federal Register**

Vol. 72, No. 199

Tuesday, October 16, 2007

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## FEDERAL REGISTER PAGES AND DATE, OCTOBER



## CFR PARTS AFFECTED DURING OCTOBER

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**S. 1983/P.L. 110–94**

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